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INSTITUT ROYAL DE LA CULTURE AMAZIGHE

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A Study of the Amazigh Customs of the Zayan Tribes

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Successive Groupings of Amazigh Society

Anarchy and the complete lack of security have forced Amazigh people to form homogeneous, stable groupings capable of defending themselves and their own property. The spirit of independence and solidarity as well as attachment to the race governs the formation of these different groupings which are as follows, according to their order of importance:

a) The family : *aït oukham or lahl*,

b) The clan : *ighs amezzian*,

c) The group : *ighs aksouat*,

d) The hamlet : *asoun*,

e) The tribe : *taqbilt,*

f) The confederation: *taqbilt taksouat*.

❖ The Family:

It is the basis of Amazigh society and consists of all the persons living under the same tent. They are under the authority of the same leader, whether they have the same blood, the same origin or not. In

other words, adopted children, shepherds and strangers living in the same home can be part of it. [1]

The quality of the tent's leader is given to the man who is most qualified by his age and his wisdom to run the family or represent it.

❖ **The Clan:**

The number of tents unified by bonds of consanguinity makes up a clan. The man reputed for his bravery, his honesty, his intelligence and his wealth may become the chief of the clan. A stranger, residing in the clan and meeting these requirements, can also be appointed for this job.

❖ **The Group:**

Four clans form an '*ighrs aksouat*' or a group.

❖ **The Hamlet:**

It consists of several groups called *'Khoms'*, *reba'a*, or *tulut*, depending on whether they are five, four or three.

It always consists of the two parts: an upper one (rrif anafella) and a lower one (rrif anadda). This is just a division of the camp and not an ethnic one.

An individual who lives in a hamlet, other than his native one, has no obligation towards the former, In case of war against his native hamlet

[1] See the coming chapters which deal with adoption and the stranger who lives in the family's house.

or another hamlet, he is free to be neutral, or to support either hamlets. However, he has to contribute to all hospitality expenses, with no distinction whatsoever.

❖ The Tribe:

It is a grouping of several hamlets, descending from the same ancestor and united by the family connections.

The name of a tribe is borrowed from that of the common ancestor and preceded by the word (aït) which means "the descendents of …", "the people of …"

The name Zayan[2], in Amazigh Azaï, plural Izayan may be derived from the root Izi, meaning, "bile". This etymology may be explained by the fact that, among Amazigh people, the bile is the symbol of courage and bravery[3]. Actually, Zayan people have always had the reputation of being brave warriors.

❖ The Confederation:

Several tribes having a common origin make up a confederation (taqbilt taksouat). Several confederations often get united by alliances which are not permanent. These alliances are always made for the purpose of joint defence or attack; similarly, they are broken off when their mutual interests are incompatible.

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[2] M. Loubignac, *Etude sur le dialecte berbère des Zayans et aït sgougou*, t.I, p., derives this name from the root essaï which means « heavy ». I am not surer than him in my proposal.
[3] The expression « Il a du fiel dans le ventre » is common in France.

Being mainly pastoral people and having a hard climate in winter, the Zayans have been forced to adopt a semi-nomad life. In winter, after the ploughing period, they come down the mountain looking for pasture in more temperate regions where snow is less abundant. These regions are known under the name of (Azaghar) and include the country located in the West of Oum Rbi'a River. Towards the end of spring, life flows back to the mountains. At this period, the climate becomes less hard and harvest is nearing.

To secure their harvests, Amazigh people build forts (Kasbas) in places that are easy for defence.

❖ Kasbas and Villages:

The village or *Ighrem*, plural *Igherman* generally include people from different hamlets. Each hamlet establishes a family in there so as to look after the possession stored in silos.

The village houses existing since the days of "Siba" (a period of anarchy and disobedience to the central government) are grouped together, an arrangement dictated by the need for collective defence. Each house bears the name of "almessi" (home). Domestic life is similar to that taking place under a tent. During the period of "Siba", all villages were surrounded by ramparts.

To build the village, the Jema'a (Assembly) chose a site to which access was difficult, then it traced two main streets that

perpendicularly crossed each other. But the tracing was done in a rough manner, and houses were built on the sides of these streets without falling into line, which gave to these villages a contorted aspect.

This type of village, which is called “Ighrem n Ibla” (a fortified village), is divided into four parts or districts. Access to it is given by one gate which is guarded by sentries who relieves each other in turn. Each village has its own administrative autonomy: it has its own assembly (Jema’a), its chief (Amghar) and its mosque.

The composition of diverse ethnic groupings is not immutable. When serious dissent divides people inside a tribe, the grouping which feels that it is too weak to make its rights respected emigrates. This is why the Aït Bouhafra group which formerly was part of the Zayan tribe of Aït Bouhaddou, emigrated as a result of a serious conflict. This emigration deprived the Aït Bouhafra, who are now a part of Aït Ndir (Beni Mtir), of all their rights and of the real estate they used to own in the Zayan tribe.

Public Law Organization

❖ **The Plenary Assembly of the Tribe, the Hamlet, and the Grouping:**

Each grouping has its own permanent assembly; thus, there is a hamlet assembly, a tribe assembly and the confederation assembly.

The assembly of the hamlet includes a member of each grouping, that of the tribe, a member of each hamlet, and that of the confederation includes a member of each tribe.

When there is an important matter to deal with, or a serious decision to take, the ordinary assembly of the tribe is replaced by a plenary meeting where all the tents are represented.

• **Composition:** Every male adult, who is brave in war, honest, intelligent, rich and known for his generosity, may be a member of the ordinary assembly. It is particularly a merit which confers the quality of the notable; there is no notable by right. It is a simple question of the fact.

Adolescents, handicapped and even strangers can be members of this assembly. They have only to possess the aforementioned qualities. A son and his father can be members of the same assembly though they may be living under the same tent.

Some important persons have a predominant voice during deliberations. It is those whose judgement and commonsense have already been proved, and who have thus acquired renown.

Membership of the assembly is not hereditary. Women, in no way, can be members of the assembly. As to the saints and the strangers who have acquired the freedom of the city, they can be members of the assembly if they have the required qualities. On the contrary, slaves and fools are excluded.

The work of the assembly members is not remunerated; however, they enjoy certain material and moral advantages.
They are exempt from the chores due to “Amghar” – the tribe’s chief. They enjoy general consideration and esteem. They usually receive small presents when a matter has been settled. They are also the first to be invited to all ceremonies and feasts. These advantages are appreciated by them.

There are no fixed periodical meetings; meetings are convened by the chief when necessary; such as in case of attack, a visit to this or that neighbouring tribe, or fixing the day of moving to summer pastures. He notifies them some days before the meeting by means of messengers.

All the summoned members have to attend. Any member who abstains without a valid motif has, as a sanction, to slaughter a sheep and entertain the assembly in his house for a whole day.

- **Meetings and Functioning:**

Meetings are usually held under the tent or in the house of the chief. The sessions start after the members have eaten the slaughtered goats or sheep, which are provided in turn by the different represented groupings.

The session is opened by the chief who announces to the assembly the object of the meeting. Before starting the discussion, the members have to say the following formula: O assembly! Curse Satan and pray for the Prophet! The debate starts then and each member is free to express his opinion and debate as he likes. Small matters may provide the ground for noising and endless sessions. Eventually, the opinion which seems to be the best is adopted. Decisions are always taken unanimously and never by majority of votes. The assembly always arranges for taking unanimous decisions; otherwise, they are not operational. The agreement is confirmed by reciting the opening Surat of the Quran.

In case the assembly is unable to reach an agreement, the session is postponed and the chief fixes the day and the venue of another meeting. The assembly's decisions are not put down in writing. Each hamlet appoints a surety who is in charge of the carrying out of decisions. All the sureties are under the supervision of the chief.

❖ **Prerogatives of the assembly:**

1. Political:

It is the assembly which has the right to declare war, ask for peace, and send deputations to neighbouring tribes so as to put an end to the disagreement or enter into pacts (tada, taïmat, etc.)

2. Judicial:

When a dispute emerges between members of the same grouping, the assembly tries to find an amicable arrangement between the parties. If it fails, the chief takes the affair into his hands as the last resort.

It is also the assembly which serves as a witness for the signing of all contracts (association, marriage, divorce, acknowledgement of debts, etc.) Its prerogatives include the modification of customs, as well.

3. Administrative: from the administrative point of view, the assembly is in charge of organising the periodical changes of camps, pilgrimages to the saint's places, guarding services for the security of the land, the reception of the guests, the maintenance of mosques and visits to neighbouring tribes.

It is, also, the assembly which amicably settles disputes concerning violation of pasture land, water distribution and agricultural lands. The only punishment that can be inflicted on the offenders consists in fines; the assembly is in charge of their reception. More often than not, a

mistake, small though it may seem, gives the opportunity for the assembly to offer itself a good meal at the offender's tent.

The assembly can also appoint arbitrators whose mission is to examine, on the spot, property disputes such as encroachment, disputed ownership, property division, etc. In this case the arbitrators are taken care of by the litigants in terms of food and accommodation.

❖ The Assistant Chief or "*Jari*"

The Zayans often refer to the assistant chief by the Arab name "*Jari*"; he is in charge of presiding over the assembly.

Appointment: He is appointed for one year by the "*Amghar*" the chief on the recommendation of the assembly.

The "*Jari*" is charge of policing; he carries out the orders of the chief with regard to the purchase of the horses, the collection of the taxes, the summoning up of individuals, the organisation of the policing in the hamlet, etc. it is he who serves as intermediary between the chief and his subjects.

The "Jari" has to meet the entire requirement for the assembly membership.

❖ *"l'Amghar"* or chief

As every hamlet has its "Jari" or Assistant Chief, each tribe has its "Amghar", Chief.

The chief is appointed for a one year term by the leader of the tribes' confederation (kaid).[4]

His appointment usually takes place in spring. In fact, during this period of the year, the cattle are fat and the butter is plentiful, which allows the celebration of the event with great pomp[5] .

In some tribes, he is called "Amghar n Tougwa"[6](Chief of Grass), first, in order to presage an abundant harvest and a good lambing season, secondly, to indicate that this chief is in charge of the tribe's pastures.

❖ Obligations and rights of "Amghar":

The "Amghar" or Chief imposes on the tribesmen the purchase of horses and ammunitions. He arrests thieves and brings them before the Kaid (the leader of the tribes' confederation).

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[4] With regard to the leader, there is only Moha ou Hammou Ezzayani. Before him, there had never been a leader and the chief was the only leader of the tribe. Moha ou Hammou, who was around 20 years old at the death of his father, Hammou n Aqqa, the chief of the main Zayan tribe, was of rare intelligence, of sharp political sense and of great ambition; he first set for himself the objective of becoming leader of all the Zayan tribes, and then expanded his rule over all the neighbouring tribes: Aït Mguild, Ichequeren, Aït Ihand, Aït Ishaq, etc. In order to facilitate his task, he did not hesitate to ask Sultan Moulay Hassan to appoint him so as to enjoy the latter's help in terms of money, ammunitions and even troops.

[5] This appointment in spring is an old custom. The Assembly members show their agreement in the choice of the chief by putting a handful of grass in his lap, saying: "Take our grass to your home" .

[6] "tougwa", which means grass, refers by extension to Spring ,which symbolises abundance and richness. Some people say that a handful of green grass is a good omen since green is the colour of the clothes worn in paradise. However, others claim that the custom of presenting grass to the "Amghar" means that his power is ephemeral and will come to an end when pasture grass becomes dry.

In brief, he serves as an intermediary between the latter and the tribesmen: he is his execution agent.

❖ **War leader:** in time of war, the "Amghar" automatically becomes the war leader of his tribe. He is in charge of running operations, transmitting the orders of the Kaid, who is the supreme war leader, and conducting detachment forces to the posts assigned to them.

The "Amghar", who is the same person, both in time of peace and in time of war, is chosen, in turns, from among well-to-do families belonging to different sections of the tribe. He cannot be re-elected except when the turn of all the other sections of the tribe has been taken. He chooses in each section a guarantor who is accountable to him and through whom he governs.

Markets

The semi-nomad sections do not have any settled merchants from whom they can buy all they need at any time, nor to whom they can sell their land, breeding and industrial products.

Therefore, getting supplies and making transactions take place in markets which are held once a week, on a fixed day and at a fixed place.

All markets, except those that are held inside villages, periodically change their location, depending on the activity at so and so place.

At the time of Kaid Moha ou Hammou, the two main commercial centres of a regular nature were the markets of Khenifra and of Sidi Ahssin.

Only big Kaids could decide the creation or the cancellation of the market.

The market is, for a semi-nomad, a meeting place where he could satisfy all his vital needs. It is in the market where he makes his transactions and inquires about commercial prices. It is in it that he gets the news and also hears the public crier announcing the activities which concern the community such as pilgrimage, war enterprise, transhumance, signing and breaking of pacts, etc. It is in the market

that he gets knowledge of the affairs related to the interests of his clan, tribe or grouping.

The market is under the protection of the Amghar (Chief) of the place. The individual who goes to it or comes back from it is under the protection of this “Amghar” all over the latter’s territory.

The “Amghar” alone is also in charge of the surveillance inside the market. Anyone who is guilty of calling off a market has to slaughter a bull for the “Amghar” as a fine. In case a market is called off, no compensation is made for any damage sustained.

Spaces at the market are free of charge. Only grocers and cereal sellers are subject to a small tax which generally amounts to one “guersh” (a small coin) per shop and a handful of grains per measure paid to the “Amghar”.

Legislative Power

Customs are passed on from generation to generation, through the ages, by means of oral tradition. They are applied to everything touching the life of an Amazigh: personal status, real estate, inheritance, contacts, relationships with his fellow men, etc.

Almost all the old Zayan people orally know the customs. Any Amazigh who needs information about these customs consults them, in the same way an Arab consults a “Cadi” (Judge) or a business agent.

Customs get modified, unlike the Islamic law which emanates from Divine Revelation. There is an example: Forty years ago, a man whose wife was abducted by a seducer received from the latter forty cows as compensation. However, one day, the great amazigh leader Moha ou Hammou, who had to try an adultery case, declared: “Anyone who catches his wife in the act of committing adultery has to kill the lover and justice is done”.

Nowadays, this custom rule has also been modified: when a man catches his wife in the act of committing adultery, the lover has to pay a compensation of the one hundred Douros (a type of coins) and spend six months in prison.

This modification was introduced at the demand of people themselves.

Judicial Power

Among the Zayans, there have never been codified laws, nor do magistrates who have been prepared to apply them.

The judicial power is exercised by the assembly to which all disputes are taken. Before they appear, the two parties have to promise to accept the sentence that will be pronounced.

There are no lawyers, nor attorneys or judicial representatives.

The parties often submit their dispute to the appreciation of one or more persons chosen by them. The decisions of these arbiters are without appeal. It is the chosen sureties who are in charge of making them respected.

Arbiters, *inhkamen* in Amazigh are chosen from among influential aged people.

❖ **"*Tada*": Solidarity:**

The personality of the individual comes after that of the grouping. The person guilty of theft, of violating protection, of blowing honour, of committing a murder, does not suffer alone the consequences of his offence. His family members jointly share the punishment he receives.

If the guilty person has committed theft and cannot pay for it, his parents pay for him. If he has committed a crime, his parents try, by all means possible, to obtain a pardon "*aman*" of the victim's family and take part, at a determined percentage, in the payment of blood money "*dia*'[7]

❖ **Tribe to Tribe Relations:**

When two tribes have no ties, they consider each other as an enemy. In order that peace could exist between them, they should appoint sureties. Usually, only one surety is appointed by each tribe. When a tribe asks from another one the permission to camp beside the latter, each one of them provides a surety (amassay), who should be an influential, wealthy and brave man.

Peace agreement is concluded between two tribes for a determined time, it can be renewed.

[7] See chapter on Criminal Law.

❖ ***"Tada"***

"tada" (solidarity) exists among the Zayans. It is established between two tribes, which have already been allied by the institution of sureties, when they want to consolidate their alliance. It is negotiated by the assembly members on behalf of the grouping.

The ceremony of establishing "tada" takes place in a big tent. At the end of the banquet organized on this occasion, each one of the two Assemblies collects in one distinct heap the right foot slipper of each one of its members. After the sleepers have been mixed up very well, a slipper is taken haphazardly from each of the two heaps. The owners of the two slippers are thus declared as allies by the pact of "tada". They are called "ait tada" (people allied by the pact of solidarity), and each one of them bares the name : "ou tada" (belonging to the alliance). This practice goes on till there are no slippers left. Two days later, each one invites his "ally" to share a meal with him in his house.

Every individual ally of one of the two groupings has to respect the obligations of the alliance with regard to all the members of the other groupings and vice versa.

Under the terms of this pact, none can hurt or speak ill of one's ally.

The ally cannot put up his tent where that of his ally was; otherwise, he faces divine curse. Similarly, he cannot have at his own disposal an

object or animal belonging to his ally, without the permission of the latter.

The “tada” is not perpetual; it can come to end ,by itself, in case of a serious conflict.

Hospitality

As it is the case all over the amazigh land, hospitality has the force of a law among the Zayans. It is for them a true duty; say a sacred obligation that no one can evade. They offer it generously, and it should be admitted that this is done with certain ostentation.

A guest is never turned out; he is always treated with respect regardless of his social rank.

The head of the family who refuses hospitality to a guest or offers it grudgingly will bring disrespect upon himself and be treated as a miser and a coward.

❖ How to Ask for Hospitality:

When a stranger, passing through a hamlet, knows someone in it, he asks for the latter's hospitality. But, when he does not know anybody, he is considered as "God's guest", that the guest of the village people.

He goes into the hamlet and waits for someone to take care of him. If, after a long time, nobody pays attention to him, he starts crying out: "I am God's guest! Offer me a shelter!" he is immediately received by a charitable person or taken to the chief of the hamlet who appoints the tent where he is to be put up, according to the rotation system that has been established for this purpose. More often than not, the guest directly asks for the hospitality of the Assembly[8]. His coming is

[8] The school-tent or mosque-tent (see details in chapters on the "Administrative Organisation of the Mosque".

announced to the hamlet's people by the mosque's Imam. Everyone, depending on his generosity and means, brings him a Couscous dish or bread.

❖ **How it is done:**

The reception of the guest varies depending on his social rank. For there are four categories of the guests, each one derives its name from the food usually served.

❖ **The Different Categories of Guest:**

1. The VIP Guests:

They consist of people of note (tribal chiefs, Assembly members, revered Marabous) whose personality, social rank or religious prestige requires that one or more animals are slaughtered. They are, thus, called "inebjioun-n-tmaghroust" (guests for whom one or more animals are slaughtered).

2. Guests of the Middle Status:

The host serves them a dish of Couscous with chicken. They are called "inebjioun-nu-fullus" (guest of the chicken).

3. Guests of a low Status:

The host serves them a dish of Couscous without meat. They are called "inbjioun-n-taam"

4. Guests of bread :

They are called " inbjioun-n-ughrum" (guest of bread) to whom only bread is given.

❖ Duties of Host:

Anyone who receives a guest should welcome him, paying marked attention to him. He should not appear sad or embarrassed. Decorum requires that he should not enquire about his origin or the aim of his trip till he has put him up.

While a guest stays with the tribe, he is considered as being under the protection of his host. The hospitality's duration can last for a maximum of three days. At the moment of his departure, the head of the family should give to his guest some road supplies. In case of danger, he should accompany him till his territory's limits.

❖ Obligations of the Guest:

Hospitality is free of charge. The guest does not have to offer anything to his host, but has the obligation to defend the former in case of attack.

❖ Receptions:

The reception of a tribe by another also occurs on the occasion of a friendly visit, a fiesta, or the signing of a pact. These receptions are decided by the Assembly and all the expenses are shared by the members of the host tribe.

Administrative Organisation of the Mosque

❖ **Nomads:**

Among nomads, a simple tent, which looks like the other tents, serves both as a school and a mosque.

It is called *Tamsguida*, or *Ljam'a* or *Sidna Jbrain*[9].

It is here that the faithful usually meet to perform their prayers together.

To pray, on the occasion of the End of Ramadan Feast and that of the Sheep Feast, nomads gather around a hillock so that they could all hear the speech of the Imam who delivers it from the top.

❖ **Settled Tribes:**

Each *Ighrem* (castle) or village has one or two mosques. Their buildings are larger than private houses. Some of them are ornamented with a minaret from the top of which the faithful are called to prayer.

Apart from the big mosques where Friday collective prayers are performed, small mosques relatively abound in Amazigh villages. Generally, each district has its own mosque.

It is the whole village which decides the building of big mosques. Each inhabitant, depending on his generosity, subscribes a certain amount to the fund collected by a *Moqaddem* (a person appointed for this purpose). To take part also in this religious duty, poor people offer

[9] *Sidna Jbrain* or the Angel Gabriel is called by *Imazighen: Amazan-n-Rbbi* (God's Emissary)

their contribution in kind: some help in the building process, others in the transport of materials.

Small mosques are built at the expense of the district inhabitants and not at that of the whole population of the village.

❖ The Mosque's Assets:

Each mosque has its own revenues named *Lmal-n-Sidna Jbrain* or *Lmal-n-Ljam'a* (Our Lord Gabriel's assets or the mosque's assets) respectively.

These assets come from pious donations given by the wealthy people of the district or of the village. Each one, depending on his resources, brings a ewe, a she-goat or a calf, all of which become the property of the community.

The offerings made at the tomb of a saint to which a mosque is attached are not part of the mosque's assets. They are by right the property of the saint's descendents, if they exist, if they do not, they are the Moqaddem's (the keeper's).

The mosque's assets usually consist of movables. However, some village mosques have land property which originate either from pious donations, or from acquisitions made by means of the money got from selling the livestock's products.

❖ **Purpose of assets:**

Before the submission of the Zayans to the *Makhzen* (the central authority), the mosque's assets exclusively served for the acquisition of war ammunition. Since the French occupation, the Zayans have given another purpose to these assets. They use them to help the needy. Any poor person who is short of money or is in need of buying an animal applies to the Assembly and easily obtains a loan free of charge taken from collective assets. The product of this property serves also for the maintenance of the mosque.

❖ **Management of assets:**

A wealthy man chosen by the Assembly is entrusted with the management of the mosque's assets. He is appointed for an unlimited time, but can be dismissed at any moment if he is found to be unworthy of continuing his mission. For all the acts concerning this management, he has first to contact the Assembly.

❖ **The Mosque's Personnel:**

Usually the mosque's personnel consist only of the Imam. He plays the role of the muezzin and leads the prayer.

In certain villages, another person is in charge of supplying the mosque with potable water necessary for ablutions. The personnel are paid by the district or the village people.

The mosque's assets cannot be used for this purpose.

Education

❖ The Quranic School Tent:

Among nomads, teaching is provided in the same special tent called *Ljma'a*, which also serves as a mosque. Each district usually has its own *Ljma'a*. The building and the maintenance are at the expense of the Assembly of the district. Each member contributes in kind.

It is the "*moqaddem*" who is in charge of the management of the school tent. Among the settled tribes, the Quranic School is located in mosques and zaouias (brotherhoods)[10].

The Quranic School teachers are paid by the pupil's parents.

The school belonging to a village is not public in the true sense of the word. Instruction is provided exclusively for the children of the village inhabitants. It is said that one single school which was open both to the tribe's children and to outsiders used to be in Arouggou[11].

The subjects taught at this school, whose ruins can still be seen, were not limited so the learning of the Quran.It seems that Arabic grammar, and literature, theology and Islamic law were taught at it, too.

❖ The Fqih (the Quranic School Teacher)

[10] The shrine of a saint ,where the disciples of a religious brotherhood gather together.

[11] A place situated at about 10 Km in the east of Khénifra.

The school contains only one class and have only one teacher called Fqih or Taleb (Scholar). All the Fqihs come from Arab lands[12].

We never find Amazigh Fqihs in Zayan lands, because usually when an Amazigh pupil has learnt a part of the Quran, his parents take him out of the school and get him involved in the daily life of the tribe. Usually a Fqih is appointed for one year with an annual salary whose amount is fixed in advance.

Sometimes the Fqih does not negotiate the terms of his appointment and leaves things to the generosity of the tribesmen.

In the latter case, each tent chief gives him an amount of money, a certain number of animals, some grain measures and fleeces.

In spring, each tent gives to the Fqih some blocks of butter called tijmi'in[13]. The first day, a child starts going to the Quranic school, his parents offer to the teacher a present proportionate to their wealth.

When a pupil has learned by heart some Holy Verses, his family sends to the teacher a dish of Couscous which he shares with his pupils and the main members of the district.

Twice a week and on a regular basis, the school children offer to their teacher a present in cash that varies between 0.25 Francs to 0.50 Francs. On the main feast days, they bring him another present, also in cash, but more important (2 to 5 Francs).

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[12] Translator's note: this is completely false. On the contrary, they come from Souss (the Imazighen of South-West Morocco).

[13] Sing. Tajmi'it, the special name given to the block of butter collected on Friday and offered yearly to the Fqih on three successive Fridays.

The alms required during the celebration of the end of Ramadan is at the advantage of the Fqih, too. This type of alms is called *Lfdart*.
Finally, the Fqih's daily food is offered in turn by the district's families.

❖ **The Fqih's Authority over Children's Discipline:**

Children are subjected to a strict discipline regulated by usage: the Fqih alone has disciplinary power over children inside the school; punishment is given in the form of beating with a stick on the soles and palms; the expulsion of a pupil is never pronounced regardless of the mistake he has made;

The Quranic school teacher should respect the prayer and study hours. He should not be absent from his work without the Assembly's permission. His conduct should be a model of piety. If his performance is not satisfactory, he may be dismissed before the contract's expiry, and in this case, he cannot get paid except for the salary proportionate to the period he has worked.

War Law

❖ **Declaration of War:**

When a tribe has the intention of waging war against another tribe, the former's chief or war leader summons the Assembly members who represent all the tribe's groupings. These representatives have all the power to accept or refuse the proposal submitted to them.

The tribe's chief attends this meeting with voting rights. The most influential person expounds to the Assembly the intentions of the Chief, enumerating the causes that require going to war and enhancing the expected results and chances of success.

After his exposition, the Assembly deliberates: each representative declares whether he is for or against the project. The decision is taken by majority vote; when there is equality of votes, the Chief's vote is decisive.

When the Assembly has decided to wage war against an enemy tribe, the war leader exposes his general plan, which is not discussed by the Assembly.

A "rekkas" (messenger) is sent to the chief of the enemy tribe so as to invite the latter's Assembly to a meeting between the two tribes at an appointed place. The two assemblies meet and start negotiations; if they do not reach an agreement a state of war is declared.

Imazighen report that sudden attacks, without prior declaration of war, were frequent. A tribe weaker than another thus resorted to the advantage of surprise so as to compensate for its numerical inferiority. However, this practice was considered as unfair; therefore, if the aggressing tribe were defeated, peace conditions became harder.

In peace time, the war leader is elected by the tribe Assembly which offers him a tuft of grass, thus establishing him in his high job. He is not appointed for life. He may be replaced every year. In peace time, he is in charge of the organisation of the future combatants and of maintaining law and order within the tribe.

Each fraction's chief is the normal surety of the members of his fraction. If he is incapable of going to war, one of his relatives goes in his stead; in case there is no one, he chooses someone else.

Any individual or group who does not answer the call to war is subjected to a heavy fine. If this concerns a whole fraction, it loses its reputation and may be rejected by the grouping.

❖ Running of Hostilities: Powers of a War Leader

Taking advantage of peace time, the Amghar (Chief) summons to a meeting the sureties of each fraction. He indicates to them the number of armed horsemen whom they have to get prepared in case of emergency.

The number of bullets which each fighter has to have is not fixed, since this number depends on the financial means of each horseman. Usually, some wealthy men of the tribe build up a reserve of ammunition which is distributed on the day of fighting.

The surety orders each tent to buy rifles or horses, taking into account its financial situation. If a tent is ordered to buy a rifle or a horse and does not obey by the deadline, it is reminded of its duty. If, despite this warning, it does not carry out this order, it is forced to pay a fine to the Amghar (Chief), and a new deadline is set for it. If, at the expiration of this new deadline, it has not obeyed the order yet, a fine whose amount is the double of the first is imposed on it. If it already possesses arms, the latter are confiscated. These fines can amount to the confiscation of all the tent's possessions.

The war leader does not have the power to put to death the head of an obstinate tent, nor does he have the right to destroy the tent. However, the defiant family loses the consideration of the tribe and each one of its members is called a 'dog' or a 'coward'.

The number of daily provisions that each fighter has to take with him to the front is determined prior to the war.The sureties make ensure, through frequent visits to the fractions, that the orders of the Amghar have been obeyed by everybody.

As soon as the Assembly decides to wage war against a neighbouring tribe, the Amghar informs the sureties of each fraction of the day, the

hour and place of gathering of all the tribe's fighters. The sureties become responsible for carrying out his orders.

❖ **The Wounded:**

In principle, the wounded are finished off by the enemy, especially if the two belligerent tribes fiercely hate each other.

The elderly, though not taking part in fighting, are not spared; male children who are likely to carry arms in the future meet the same fate too. Only women and little girls are spared and sent back home, after their possessions have been taken away from them.

❖ **The Prisoners:**

All prisoners are put to death, Moha ou Hammou was the only Kaid (leader) who did not massacre them, nor did he reduce them to slavery or forced them to work. Each family could ransom one of its members by calling on the Kaid after they have slaughtered an animal as a sacrifice. The ransom is proportionate to the family's wealth.

When two enemy tribes take prisoners, they exchange them without taking into account their number. This exchange takes place on the day a truce or peace has been agreed on.

❖ **The Killed:**

In the aftermath of a battle, when enemy corpses remain at the battlefield, women are allowed to come and fetch them. If after some

days they remain unburied, some faithful fighters bury them according to the rites.

Every Amazigh desires to be buried near his hamlet; thus, it is the duty of any tribe which possess enemy corpses to restore them to their families.

Enemy corpses are burnt by a tribe only when it has learnt that their adversaries have done the same to the corpses of their fellow tribesmen. Actually, such an act is forbidden by religion and any tribe which does not respect the corpse of an enemy attract divine curse on itself.

❖ **The Booty:**

At the end of fighting, the booty taken from the enemy is collected with the exception of arms and ammunition. Every fighter, who has taken a rifle from the enemy, is entitled to receive above his share of the booty the equivalent of a quarter of the seized rifle's value, while the other three quarters are given to the community.

Cartridges remain the property of the fighter who has seized them. In the sharing out of the booty lost rifles and killed horses of the fighters are taken into consideration.

As to the sum of money given as compensation to the families of the killed, it is not taken from the booty. The victims' parents are entitled to receive merely the former's share of the booty as fighters.

All the Assembly members, as well as the leaders and chiefs are entitled to receive a larger part than the others. No other favour is given to them.

The sharing out is done as follows:

Depending on whether he is armed or unarmed, a foot soldier is entitled to one share or half a share, respectively. In similar conditions, the cavalryman has two parts or one part and a half.

All the enemy's possessions can be seized. Men, women and children may be stripped of their clothes.

❖ **End of Hostilities – Truce:**

Only the Amghar (the Chief) is qualified to propose to the Assembly the signing of a truce, but it is the latter which decides the acceptation or refusal of the proposition. Once the decision is taken, the Assembly sends a messenger to the enemy tribe's chief so as to ask for a meeting of the two Assemblies. If this meeting is agreed upon, the war leader, accompanied by a representative of each fraction, goes to the place of the meeting. He offers to the enemy Assembly an animal sacrifice. After the discussion, if the two assemblies agree on the terms of the truce, they sign it.

It is common that in the middle of the fighting, cavalrymen of a neighbouring tribe, not involved in the conflict, obtain a brief interruption of fighting by crossing the line of the battle from one end to the other, while waving their burnouses. By doing this, they

indicate to the fighters of the two tribes that they want to serve as intermediaries.

Fighting is, thus, suspended and the two Assemblies meet together to start negotiations. If they agree upon the terms of the truce, the two tribes cease fighting; otherwise, the intermediary cavalrymen withdraw and fighting is resumed.

Truces last only for a few days. When they are signed by adversaries of equal forces, they result from a brief feeling of weariness about fighting, or the necessity to bury the dead, or the need to get supplies.

Longer truces are agreed upon during the ploughing and harvest seasons. Fighting ceases for three or four months. If the two parties are of equal force, the truce is agreed on without conditions. But when a tribe is superior to its adversary, it requires the payment of compensation in cash or in kind (a part of the harvest).

During the truce, the life of peace time is resumed. If one of the two tribes wants to resume fighting before the expiry of the truce, it has to inform its adversary. Similarly, if at the expiry of the truce, one tribe desires to extend it, it is the two Assemblies which accept or refuse the extension. Any tribe which does not keep its promises during a truce is accused of cowardice and impiety.

❖ **Peace:**

Peace is solicited by one of the two adversaries in the same way the truce is asked for.

When seeing that his tribe on the point of being defeated, the Amghar (the Chief) asks the enemy to sign a pease treaty. For the signing of this treaty, it is the Chief of the winning party who presides the meeting. The members of the two assemblies act as guarantors for the respect of the terms agreed upon.

Taxes

Before the French occupation, the Zayans never paid any regular taxes to the central government. However, at the time of Kaid Moha ou Hammou, presents were offered by him to the Sultans of the period.
The big chiefs who successively ruled Zayan tribes had always practiced an arbitrary principle in collecting taxes inside their tribes.When they needed money, they forced the fractions to pay them a certain amount or give them a certain number of animals, mainly consisting of sheep.

Another means of getting money lied in frequently dismissing the tribal fractions' chiefs and replacing them by others. This office was given to the highest bidder. However, it was finally the whole tribe which paid the cost. In fact this disguised tax was later distributed among different fractions by the new vice-Kaid assisted by five persons of note. To divide these taxes, which are paid in cash or in kind, consideration was given the degree of the wealth of each tent.

In addition to these taxes, there were other payments in kind. During the ploughing and harvesting seasons, the tribe has to offer to the Kaid a certain number of workers. Vice-Kaids had their share of these chores called *Tiwizi*.

Other taxes, of a potential or extraordinary nature, were levied for the particular needs of the grouping, such as the reception of a Kaid, a Shrif (holy man), the Assembly of a friendly neighbouring tribe, the

creation or maintenance of a mosque tent, etc. It was the Assembly which judged of their advisability.

The only taxes which were justified were as follows:

1. Taoubat-n- lmakhzen (Gouvernment Tax):

A tax shared out among the fractions, it served to pay the expenses of the reception of the Kaid.

2. Ljar–n-ljam'a (Mosque's Fund):

It is a collective contribution to the building of a mosque or a school.

3. Chard-n-Taleb (The Imam's Salary)

It consists of the collection of money that served to pay the annual salary of the Imam.

Taxes were divided either among fractions or among hamlets or finally among the inhabitants of a hamlet, depending on whether they were meant to answer the needs of a whole tribe, or of a fraction or only of a hamlet. There was no close relationship between the division of taxes and the distribution of agricultural lands.

The tents gave to the hamlet tax collector their share, and when the whole amount was collected, it was given either to the Assembly, or to the Vice-Kaid, depending on its purpose.

When the use of these funds required a longer amount time, such as when building a house, for instance, the hamlet's chief looked after them. It was he who was in charge of payment as work progressed.

He should have a list of all the expenses of his management, which he then submitted to the Assembly's control.

Pecuniary Compensations and Fines

1. In case of Death:

Anybody who commits murder, whether intentionally or not, has to pay to the victim's family a compensation called *dia* (blood money)[14].

2.

3.

4. In Case of a Wound:

In case of a wound which results in the loss of a member or of an organ, the amount of the compensation is proportionate to the importance of the physical or esthetical prejudice.

Below is a detailed list of compensations fixed by custom with to regard to blood money (dia):

- Loss of the male sexual organ's use : not provided for
- Loss of an eye : ½ dia
- Loss of both eyes : 1 dia
- Loss of one of the four members : ½ dia
- Loss of two members : 1 dia
- Loss of three members : 1 dia
- Loss of four members : 1 dia
- Loss of both ears (cut) : 1 dia
- Loss of one ear (cut) : ½ dia

[14] For a detailed analysis of this compensation see the chapter on Penal Law.

- Complete loss of hearing : 1 dia
- Loss of nose (cut) : ¼ dia
- Loss of a woman's nose (cut) : ½ dia

The women's share of dias (blood money) is equivalent to half of the share of men.

In case a pregnant woman is killed, the parents of the victim get two dias: one for the woman and the other for the foetus. The latter varies dependency on whether the foetus is male or female.

If a woman suffers a miscarriage resulting from beating or injuries, she is entitled to receive one dia if the foetus is male, and half of it if is a female.

The hamlet Assembly, presided over by the local chief and consisting of three or four distinguished men, imposes a fine proportionate to the seriousness of the wound.

We have seen above that any injury suffered during fighting does not require compensation.

For the payment of a fine or of blood money, a deadline is given to the person responsible for paying it. The latter can ask for an extension by offering an animal sacrifice to the assembly.

Other fines are imposed by the community as a punishment for the social trouble caused by the wrong doing.

The chief has the power to impose fines on:

1. Any member of the tribe who does not carry out his orders in time, such as the case with buying a horse or a rifle[15] .

2. Any person responsible for the disruption of a weekly market.

As to other wrong doings such theft and disputes, it is the Assembly which decides the punishment after deliberation.

Fines vary and the amount is the result of a discussion between the judge and the wrongdoer. Usually, they consist in a certain number of animal sacrifices (ewes or she goats) offered as a meal for the chief and his followers. The wrongdoer is always assisted in payment of the fine by his clan members.

[15] This fine is called Izmaz

Assistance Institutions

The Principle of assistance is deeply anchored among Imazighen. They mutually help each other within the limits of their capacities. An Amazigh who finds himself in a dire situation is never abandoned to his own fate; he is always supported by his fellow tribesmen. In fact, a wealthy person who does not help a fellow tribesman in need of money is considered as a traitor to his community and suffers public contempt.

In a country where there is no charity institution, nor a banking institution, to get some help in the form of a gift or a loan, it is only natural that an Amazigh who is in need asks for his wealthy fellow's help. The answer is always positive. During the ploughing season, rich people who have large reserves of grains, almost always lend grains to those who need them. Similarly, anyone who goes to the tent of a rich man desiring to get a she-goat or a ewe, as a gift or as a loan, for the sheep feast is never sent back empty handed.

❖ The *Tiwizi*

The services rendered by the rich to their needy fellows never remain unrewarded. Acknowledging the charity they have received, the needy always show their gratitude in an effective manner, particularly, during agricultural works. Each tent generously sends one of its

members to plough or reap grains in the benefactor's field. This type of assistance is called Tiwizi (voluntary help).The workers do not receive any salary; they are only fed by the person who benefits from "*Tiwizi"*. The meal always consists of one or several slaughtered animals.

When the people of a grouping live in a constant atmosphere of mutual understanding, they reciprocally perform "*Tiwiziin"* (plural of "*Tiwizi"*, i.e. voluntary work).

When someone is incapable of answering a call for a tiwizi by himself, especially when the benefactor has come to the latter's "*Tiwizi"*, the person can fulfil this obligation by sending a servant or a paid worker.

In addition to these "*Tiwizin"*, which spring from the principles of mutual assistance, there existed other types which were of a different character; namely forced chores which were imposed by powerful chiefs feared by those whom they ruled.

"Tiwizi" has always been practiced by Zayan tribes with exaggeration. All the big chiefs have abused of this free labour to cultivate their land and reap their grains. These chores were part of obligations people were subjected to with regard to their governor. They were services in kind.

The benefactors of compulsory "*Tiwizi"* had recourse to free labour at any period of the year. For ploughing and reaping, the worker had to provide all the instruments necessary for his work, including animals.

He had also to provide food for himself and for his animals during the whole period of his work.

Neither illness, nor any other case of hindrance, would exempt him from this obligation. If he cannot go himself, he should find someone to replace him and pay for his services.

❖ ***La'chour*(the tenth)**

In addition to hospitality which is considered as a sacred duty, a certain amount of grains and a number of animals is taken and distributed to the poor. This kind of alms is a religious "tax" paid for God. It is called "*Lhaq"* n Rabi (the part of possessions owed to God). Imazighen call this "*la'chour"* (the tenth) whether it is paid from the harvest or from the cattle.

1. *"La'chour"* is one tenth of the harvest. It is taken at the threshing floor immediately after the completion of threshing.

2. The Zakat (compulsory alms) which is practiced at 'Achoura (the anniversary of the Prophet's death). There is an established proportion for each animal species: one hundredth for sheep and goats and a thirtieth for cattle.

Imazighen divide the *"L'achou"*' and the Zakat into three parts: one part for the beggars, another for the Imam, and the last for the hamlet's poor people who "do not dare to beg". The Zakat is distributed in kind or mostly in money.

There is another deduction from the harvest; it is called "*fadra*" (the end of Ramadan compulsory alms). Following the example of the

Prophet Muhammad, these alms should consist of the foodstuffs usually eaten by the donator. The Zayans offer hard wheat, barley or corn. The family has to handout four handfuls of a man of medium size for each one of its members – regardless of their age or sex – the prophet's measure (*Sa'a- n- Nebi*) which is common among the Arabs is rarely used among Imazighen.

There are other ways of assistance; they consist in reserving a certain amount of food for the poor, on the occasion of a wedding, a death or a feast. Similarly, on the occasion of the sheep feast, many Imazighen offer a sheep or goat to the needy so as to allow the latter to perform the sheep ritual sacrifice.

Food Stores

In general, a Zayan person is provident. He never sells all his harvest at once; he uses it only according to his needs. Grains are stored in *tisrfin* (silos) or in *sellat* (Arabic word for reed containers) or more often than not in stonework stores.

❖ **Silos:**

Silos are rarely found in Zayan lands, not that their usage is unknown to the inhabitants, but because the soil is permeable and thus unsuitable for this purpose. The very few silos that one comes across are found among the Ait Bou Haddou tribe, for the latter actually possess soils of better waterproof qualities. To dig silos, the inhabitants choose an elevated site in the immediate neighbourhood of an inhabited area. The land meant for this purpose is collectively bought by all those who desire to dig one or more silos. Each one pays the landowner by his own means.

Wheat and barley are stored there and sometimes butter jars, too. Once grains are stored there, a man is appointed to watch over silos for one year. He is called *amarras* (guard). He is paid in kind and receives an amount of grains fixed in advance. He does not know the quantity of the stored grains but knows the number of silos. The owner of a silo can get his grains or part of them even in the absence

of the guard. In case of theft, the guard should compensate for the loss but does not incur any special punishment.

❖ **Buildings Servings as Stores for Grains and other Foodstuffs:**

The Zayans are first of all pastoral people; they like freedom without limits; they have always preferred tents to houses and the countryside to villages. However, as the tent is hardly enough for his family and does not allow him to keep his supplies in foodstuffs, his agricultural instruments and other cumbersome objects, a Zayan person has recourse to stonework stores.

With the security imposed by the French occupying forces, these stores are today found everywhere. But during the "*Siba*" (anarchy) period, they were necessarily grouped together so as to facilitate their defence. Undoubtedly, this is what has given birth to villages in Amazigh lands.

In each *ighrem* (Amazigh castle),each group of families allots a house for storing grains. The granary, called A'arich in Tamazight (c.f. *agadir* in the south-west of Morocco), is constructed in a simple way. It consists of a room of about 2.50 metres to 3 metres wide, 6 metres long and 3 metres high. The roof is tilted and made of rough boards. The entrance consists of a single opening looking towards the south and made in the wall at about one or two metres from the soil's level.

Access to it is by means of a ladder which is easily placed and removed.

❖ **Guarding:**

The guarding of foodstuffs stores is usually entrusted to persons who permanently live in them. In each granary-house a room is reserved for the appointed watchman, or for a stranger who has a shop or a handicraft business in the village. The watchman gets as a compensation for his job accommodation free of charge.

In the past, extra precautions were taken when camps were established far away from granaries. Each group possessing a village-granary left in it a certain number of people taken from each family.

Since our conquest has established security in the country, isolated granaries have emerged almost everywhere. Each landowner has built his own granary in his land, and one man is, henceforth, enough to ensure the guard of the store

Common Houses among Settled Tribes

There were no common houses in the villages existing in the region of khénifra[16]. The Assembly usually held its meetings in the house of one of its members. Public celebrations usually took place in open air.

Guests, travellers, merchants, etc. who knew someone in the village went directly to his house. They were always received and put up. If they were strangers, they were considered as "Guests of Allah"; they asked for hospitality of the first inhabitant whom they met, or merely went to the mosque. In the latter case, they were looked after by the Assembly which provided them with food and accommodation[17].

[16] At the initiative of local authorities ,common houses are actually found in the town of Khénifra. Each Zayan tribe has built its own house at its own expenses. These buildings do not serve as a meeting place for the Assemblies, or as a venue for public celebrations. They were merely meant for accommodating travelling countryside people.
[17] See Chapter on hospitality.

The “Taymat” or Fraternity Institution

“Taymat” is a pact of fraternity which unites the inhabitants of any hamlet with a stranger. The former is somehow the protector while the second is the protected. By this pact, the two contracting parties swear mutual faithfulness, assistance and help.

“Taymat” does not differ from love, which is dealt with in a specific chapter, except in the following point: the two united individuals have to display mutual solidarity for paying any fine or tax incurred by one of them. Its effects are extended only to the protector’s tribal group which is automatically bound by this agreement with regard to the protected person.

The two parties should not necessarily get the assent of their respective clans. They are really considered as bothers but without the rights pertaining to this title such as those of inherence. The marriage of one of them to the daughter, mother or sister of the other is allowed. They can live either separately or under the same roof. In both cases their mutual obligations do not change. The dissolution of the fraternity pact is possible. To do so one of the contracting parties has only to say in public that he no longer considers the other as a brother.

Strangers

Imazighen who come from another tribe not belonging to the Zayan confederation, Arabs, Jews [18] and Christians are considered as strangers.

In the past strangers were under the protection of the leading Amazigh chief, and nobody had the right to rob them, since hospitality led to the protection of the host and his tribe.

❖ Strangers settling in the tribe

In order to be able to settle in a tribe, a stranger has to offer an animal sacrifice to the protector he has chosen. The religious nature of a person can exempt him from slaughtering an animal. Strangers can acquire the same rights as the tribesmen on the condition that they have resided there for at least two generations. The transfer of landed property to strangers who have not acquired the right of citizenship is forbidden. But the tribesmen can give them lands for farming purposes.

In case of murdering a stranger, the guilty person should pay blood money to the family of the victim and l'ar (a kind of compensation) to

[18] Jews had never been able to settle easily among the Zayans, who seemed to be in the habit of killing them when they encountered them. Any Jew, who wanted to settle in Zayan lands after having embraced Islam, should get in advance the protection of a great leader. The latter announced publicly in markets the desire of this Jew to convert to Islam and the decision of taking him under his protection, thus asking that the Jew be treated as a brother. As a result, the Jew changed his name, and having won the protection of the tribe, he usually started a business there.

his protector. If the victim has no family, blood money and l'ar are paid to the protector. In case of dispute with a third party, the stranger can discuss the matter on his own, without having recourse to his protector.

A stranger, who has obtained the right of citizenship, has the same political rights as the original tribesmen. He can participate in the deliberation of the Assembly and in the appointment of a surety or a chief. He can also, though in rare cases, be appointed as a vice-chief or a "Mqddem" (a district chief). Any stranger residing in the tribe has to pay taxes, like the original tribesmen, and in war time should participate in defending his protector's tribe.

All the rules of protection are applied between the stranger and his protector.

❖ **Nationality**

A woman continues to be a member of her tribe even if she gets married outside it. If she has any children, they are also considered as belonging to her tribe.

When a child is born outside the tribe, he is considered as a member of his father's tribe. But, if he desires it he can opt for the tribe where he is born.

❖ **Arabic Element**

Arabs settling in Zayan lands come from different parts of Morocco. At first, they came for trade purposes but later they settled there.

Imperceptibly, some of them have lost their race characteristics to the point that they have been assimilated to the “Berbers”, i.e. Imazighen.

Many sheriffs (religious people) have settled in Zayan lands for a long time; namely, the Aït Nouh, El Herri, Tameskourt, Arrouggou and Taskert. Sheriffs are mainly agricultural and pastoral. The religious influence of this Arabic element is felt day by day, but on the whole Zayan tribes appear to be still less Islamized. Sheriffs respect the rules imposed by custom; however, they solve the problems of personal status that concern them by applying the Shari'a (Islamic Law).

❖ Legal Conditions of the Jews:

Before the French conquest of the Zayan lands, no Jew has ever ventured into this region. Therefore, no custom rules pertaining to them are found there.

Criminal Law

❖ Blood Money

When someone commits a murder – whether it is wilful or unintentional, he has to pay blood money to the victim's parents. Sometimes when the latter are powerful, they do not accept pecuniary compensation and try to apply an eye for an eye law. In case a person has to remain in bed as a result of being beaten, the aggressor has to pay medical expenses and the victim's food during the whole period of his illness. If the injury has resulted in a functional impotence or merely an aesthetic damage, there is a need for pecuniary compensation. It is the Assembly which evaluates and fixes the amount of damages.

As to penalties, custom law makes no provisions for them. Prison sentences, hard labour or death sentence do not exist.[19]

❖ Vengeance or an eye for an eye in case of murder

Vengeance is usually used against the murderer himself or one of his family members. An eye for an eye should not be used except against a person of the same sex as the victim. The murder of an adult can be compensated for by the killing a child and vice versa. The amount of

[19] It is reported that death sentence was applied twice by Kaid Moha ou Hammou in cases which hurt his pride. He was criticized by his subjects, thus capital punishment has never been used since then.

blood money is the same regardless of the age or social status of the victim. It varies only with sex. The blood money paid for the murder of a woman is half that of a man.

A murder committed by vengeance does not give the right of an eye for an eye to the parents of the first murderer. However, among certain families where hatred is deep-rooted, deaths come one after another regardless of the number. If a pacific agreement takes place later, the party which has more deaths receives blood money for the difference.

After a war, when there is unequal number of deaths from both sides, there are two alternatives:

1. If the battle took place between different fractions of the same tribe, or different tribes of the same confederation, the party which suffered most receives as many amounts of blood money as the number of extra deaths it has incurred.

2. When fighting took place between two tribes not belonging to the same confederation, the killed are not counted, and no compensation is due to the party which has more victims.

Vengeance can take place even in the territory of another tribe.

❖ **Pecuniary Compensation:**

Usually, in case of murder, recourse to pecuniary compensation does not occur immediately. However, to avoid an immediate bloody outcome and in an attempt to negotiate an amicable arrangement, the

two families conclude a truce whose duration is three days, or three, six, nine or twelve months.

This period of peace, which can be extended, is guaranteed by the establishment of sureties chosen from among the distinguished people who enjoy enough prestige that will ensure the fulfilment of the commitments made by the parties.

In case the truce has not been demanded or has not been obtained, the murderer has to run away if he belongs to the tribe of his victim. His nearest relatives have to follow him in his escape or disown him by offering to the victim's parents a certain amount of money fixed by the Assembly and called Tbrya (discharge).

❖ **The Murderer's Status:**

As soon as a murder is committed, the criminal should immediately ask the victim's parents to offer him a period of truce; otherwise, he and his family will be exposed to the swift effects of an eye for an eye custom.

Local custom can, in no way, impose on the entitled beneficiaries to accept blood money.

To obtain a first period of peace which varies between three and ten days, the murderer should have a sheep slaughtered on his behalf by a neutral party at the burial of his victim while the latter's grave is still open.

If no pacific settlement has been reached before the deadline, the neutral party takes the necessary steps with the victim's family in order to get a second truce which is usually of three months, and is likely to be renewed.

To ask for this truce, the murderer should put up a tent near that of his victim's heirs. A calf and ewe offered by the murderer are taken to the place. The calf is fastened to a peg of the tent. The ewe is slaughtered and given as a meal to the mediating Assembly which is going to stay in the tent of the victim's parents. After finishing the meal, the Assembly announces the object of its visit and asks for an extension of the truce. This demand is expressed in these terms:

"For God's sake, we ask you for an extension of the truce".

This truce, which may be refused, is always accepted thanks to the zeal of the mediating Assembly.

Usually, it is not possible to negotiate usefully the blood money issue till after one year's truce at least. For, as it is said, time will have diminished the pain and will have helped the relatives forget the burning memory of the victim's death.

❖ **Blood Money Amount:**

The degree of family connection is not a factor in the variation of the bloody money amount.

As to a Jew who has not been under protection, blood money is not due. The Zayans have not known the case of a murdered Jew who is not under protection. It is reported that a Jew who came to Zayan lands and placed himself under the protection of a Kaid was killed on the way, the Kaid immediately asked for compensation; thus he got three hundred Reals.

The amounts of the blood money in different Zayan tribes were as follows:

- **Aït Bou Mzil,** before Moha ou Hammou's rule:

a. for the victim's parents: two hundred Doros and three women (or fifty Doros per woman); that is three hundred fifty Doros;

b. For the Assembly: twenty five Doros;

c. For the 'Adouas'[20] (the surety) ten Doros.

- **Since the start of Moha ou Hammou's rule:**

a. For the parents : three hundred fifty Doros;

b. For the Assembly: twenty five Doros;

c. For the 'Adouas': ten Doros.

[20] For the definition of 'Adouas' see below.

- **Aït Bou Mzourh – Aït Hmad ou Hammou Fraction:**

a. For the parents: two women (or twenty five ewes or two bulls per woman) and one hundred ewes;

b. For the Assembly: twenty five Doros;

c. For the ‘Adouas’: ten Doros.

- **Aït Bou Zemmour Fraction:**

a. For the parents: one hundred fifteen ewes, and one woman or three ewes;

b. For the Assembly : twenty Doros;

c. For the ‘Adouas’: ten Doros.

- **Aït Lahyani Fraction**

a. For the parents: a woman or thirty ewes or three bulls;

b. For the assembly: twenty Doros;

c. For the ‘Adouas’: ten Doros.

- **Aït Hammou 'Issa, Aït Lahcen ou Saïd, and Aït Bouhmad, Aït Lahcen:**

a. For the parents: three hundred Doros;

b. For the Assembly: ten Doros;

c. For the ‘Adouas’: ten Doros.

- **Aït Ma’i:**

a. For the parents: eighty Doros, forty ewes, a cow and a bull.

b. For the Assembly: twenty Doros;

c. For the ‘Adouas’: ten Doros.

- **Aït Haddou Hammou:**

a. For the parents: one hundred thirty Doros,

b. For the Assembly: ten Doros;

c. For the ‘Adouas’: ten Doros.

- **Ihebbarr :**

a. For the parents: three hundred Doros,

b. For the Assembly: ten Doros;

c. For the ‘Adouas’: ten Doros.

- **Aït Bou Haddou :**

a. For the parents: three hundred Doros,

b. For the Assembly: ten Doros;

c. For the ‘Adouas’: ten Doros.

- **Aït Sidi Bou 'Abed:**

a. For the parents: three hundred Doros,

b. For the Assembly: ten Doros;

c. For the ‘Adouas’: twenty Doros

The Imhzan never received blood money for the murder of a family, they always avenged him.

However, they received:

- Three hundred Doros for a Chenguit (a person from Chenguit province in the Sahra, precisely in Mauritania);

- Sixty Doros for one of their slaves.

The blood money for a man killed while trying to steal is fully required. The parents of the killed thief can avenge his death.

❖ **Wounds:**

In case of wounds, the amount of damage is evaluated in relation to the importance of the injury:

- The loss of one hand requires paying half blood money;

- That of both hands the full amount of blood money;

- For the loss of one eye: half blood-money; that of two eyes, the full amount;

- For the loss of one tooth: twenty Doros.

Moreover, the offender has to pay for the medical care received by the victim, regardless of his social rank.

Now, it is important to define the role of the *wassi* (a type of witness). It sometimes happens that an individual who has been beaten seems to have recovered but later falls ill and dies. In this case, before his death, the victim calls to his deathbed a known man who does not belong to his family; he tells the latter, as a witness, that he is dying from his wounds. At his death, the 'wassi'(witness) gives evidence before the Assembly, and the perpetrator of the blows is forced to pay blood money.

Sometimes, the offender rejects the testimony of the Wassi. In this case, certain tribes, particularly the Aït Chart and Aït Haddou Hammou ones, the hurt part of the body is examined so as to verify whether there are traces of blows, and following the findings blood money is imposed or rejected. If the traces of the blows are not externally apparent, there is even recourse to post mortem in order to determine the hurt organ.

❖ **Accidental killing:**

Accidental killing requires paying blood money, but the murderer is not forced to flee from the tribe, for blood money is always accepted. The amount of blood money here is the same as for wilful murder.

❖ **Attempted murder:**

Attempted murder is not punished. The Assembly does not intervene. No compensation is required.

❖ **The paying of Blood Money:**

The payment of blood money is carried out in three instalments during the year. The murderer provides one third of the payment, while the remaining two thirds are shared out among all the members of the clan, including the murderer. It is an obligation for the murderer to accept the contribution of his fellow tribesmen even if he is well off and can do without it. This obligation is based on the principle that every amazigh has to help and support his fellow tribesmen and is entitled to require reciprocity. Thus, when a murderer refuses the help of his fellows, he will be considered as a rebel and excluded from the community.

It is possible to give as a payment of blood money one or more women, but the family's victim are not required to accept.

❖ **Blood Money Beneficiaries:**

The amount of blood money goes to the nearest heir of the victim. Since women do not inherit among the majority of the Zayan tribes, they are not entitled to get a share of blood, money. The Assembly gets an amount of blood money, varying from ten to twenty five "*Reals*", depending on the tribe. The *Adouas* gets ten to twenty "*Doros"*.

The *Adouas* is a person chosen from among the negotiators of the amount of blood money to be paid. More often than not, he is taken from among the most influential relatives of the victim; failing that, a member of the Assembly plays this role. His duties are as follows:

- To prevent the revenge of the victim's family from taking place.
- To make sure that no provocation comes from the murderer or his relatives.
- To ensure that the murderer's parents remain within the assigned zone till the settling of the blood money issue.

Moreover, the ten to twenty *Doros* which he receives are not deduced from blood money amount given to the victim's family.

The Zayans consider attacking women as an act of cowardice and lack of dignity on the part of the warrior. However, when the murderer is a woman, revenge is taken on her or on one of her female relatives.

It is important to note that when the murderer is not exactly identified, the person suspected by the victim's parents, has to prove his innocence by taking forty solemn oaths in case the victim is a man and only twenty when it is a woman.

Offences bringing disgrace

A wife cannot require the faithfulness of her husband. On the contrary, the latter has to be intransigent on this point; his right for compensation can reach the point of killing her.

❖ Evidence :

The declarations of the unfaithful wife have no value. She cannot even try to prove her denials by displaying a piece of her rapist's clothes.

If it is impossible for the husband to furnish irrefutable evidence against the person he accuses of being his wife's seducer, he takes him before the Assembly.

Anyone accused of this act has to take an oath, along with twenty people, five of whom should be among his relatives, stating that he is telling the truth.

If the offence is noticed by the cuckolded husband's father or brother, they should support their accusation by providing a piece of the clothes of both the wife and the lover.

❖ Punishment:

In case the husband catches the two lovers red-handed, he should kill them both in order to preserve his public esteem. Once he has

accomplished his act, he should certify it by witnesses. Nonetheless, he is consequently considered as a murderer and has to escape in order to avoid an eye for an eye law. The effects and the consequences are the same as the ones resulting from other murders[21].

In case the murderer has children, he is not forced to pay blood money for the killing of his unfaithful wife.

It should also be remarked that the husband has the right to disfigure his wife convicted of adultery, on condition that these mutilations should not lead to her death.

❖ Pecuniary Compensation:

If the cuckolded husband does not take revenge, the seducer should pay him, in damages, the sum of one hundred 'Reals', which is called 'Makhsour' (expenses), or 'A'dam' (price of tarnishing reputation) or also 'Assird' (cleansing). This sum is required immediately and no delay is given. In case the adulterer tries to avoid paying immediately, the offended husband has the right to kill him.

❖ Civil Punishment

The cuckolded husband is not required to divorce his wife. If he does so, the dowry he gave her is given back to him.

At the moment of divorce, the husband can forbid his wife to get married with certain individuals whom he suspects of having led her

[21] See the previous chapter.

away from her duties, but he cannot go beyond three. This right is called ‘Tirhouni’ (depriving her of the right to marry anyone she likes).[22]

The above conditions show the extent of the husband’s rights over his wife. They also show that the Zayans consider adultery as an offence which only tarnishes the honour of the husband and of his relatives.

❖ Rape

Customs are only inflexible with regard to anything involving the honour of married women.

Rape is not considered as a crime as is the case with adultery though it brings dishonour on the girl and her family.

In other words, raping a young girl is not avenged by using arms; therefore, a simple compensation paid by the seducer may suffice to repair the crime.

A young girl who, thus, loses her virginity is exposed to the scoffing of her female friends, who insults her in this way: “O, you whose virginity was taken by shepherds!”

[22] C.f. a similar custom involving the right of Chfa'a (i.e. the right of a person to redeem sold property belonging to his family), as will be seen in a later chapter.

❖ Evidence:

Intercourse with young girls is so easy that it would be extremely rare to recognise it as a rape. Some people maintain in this respect, that, if the wrongdoers are not caught red-handed, the young girl prefers to keep to herself the secret of an act to which she usually gives little importance.

To admit that rape has taken place, the victim should have shown resistance that is manifested by cries and calls for help herd by witnesses. The declarations of the young girl alone are not valid if she can not prove them by signs of her resistance to the rapist.

❖ Sanctions :

When there is lack of evidence, the alleged rapist should provide witnesses supporting his denials.

❖ Pecuniary Compensation:

In some rare cases of rape, the culprit atones for his crime by marrying the victim. This kind of marriage may last for a short period. Such act is enough to allow the woman regain the public consideration she has lost.

If he refuses to marry her, the culprit should give the victim's parents a compensation whose amount usually varies depending on the quality and the social rank of the latter's father.

This compensation is not a punishment for the rape as a crime; it merely tries to make for insult suffered by the young girl who has lost her virginity.

❖ Girls-mothers and women having a child outside the wedlock:

Girls-mothers are hardly less considered than the other girls.

As to the father, he is almost always satisfied by resorting to the corporal punishment of his daughter accused of this offence.

❖ Illegitimate children:

In some rare families among whom the sense of honour is developed, the illegitimate child is killed. The father assigns the execution of the new-born to his daughter or more often to his wife.

Today's Zayans declare, however, that executions of this type are very rare and that they themselves have never heard of such acts.

The illegitimate child is given many bad names such as 'son of a bitch', 'bastard', etc.

Protection (*taztat*)

When a stranger can stay only a few days in a tribe, either for business purposes or for any other objective, he should place himself under the protection of this tribe's people.

❖ The Protector's Responsibilities:

The protector bears the name of *amztid*[23]. The protected person does not have any special name; he is usually called *anajdi* (traveller).

When a stranger has passed many times through a tribe in the company of his protector, he is under the tacit protection of the latter. Therefore, he no longer needs the protector's presence to feel secure, and does not have to pay him any fees. He has become his 'brother'.

In case the protector feels that he does not need to be anxious about the security of the person he protects, he sends in the company of the latter one of his friends, his wife or one of his children. Sometimes he merely lends him his horse. The latter represents a safe conduct that is equivalent to the very presence of the animal's owner.

However, if the protector fears for the safety of the person he protects, he provides him with an escort of armed people under the command of a qualified person.

[23] Plural : imztden

The whole convoy is called ‘Akabar’ and its chief ,who is not necessarily the protector, but the person who takes care of the animals and the escort people is appointed by the leader of the convoy.

The Zayans do not consider the practice of protection as a source of material rewards. ‘Imstden’ (protectors) are always people of high social status.

Before the French conquest, it was Moha ou Hammou who was the only provider of protection except in the land of Aït Bou Haddou, who provided protection in their territory till their border with Aït Sidi Bou Abbed.

Granting protection involves the tribe’s honour.

❖ Conditions:

When he is paid, the protector distributes the money among the people who have taken part in the escort or contributed in one way or another to the protection process.

❖ Fees:

Fees vary; the following scale is commonly accepted:

- F 2.50 for a camel and its load;
- F 1.25 for a mule and its load;
- F 1 for a donkey;
- F 0.25 for a sheep.

Riders and pedestrians do not pay anything.

❖ General considerations:

If the protected person is robbed by one way or another, the protector does not owe him any compensation on condition that people in charge of the escort have defended him to the utmost of their capacity. Since they have fulfilled their duty, the protector cannot be held responsible for the consequences which the hazard of the fight has made unfortunate.

General Considerations on Protection (Groupings Depending on other Groupings)

Conventional protection between two communities resulting from the signing of an agreement did not exist among the Zayan tribes. It was a natural phenomenon. It was only found among the confederation's tribal groupings and non-Zayan tribes. Neighbouring tribes often solicited the protection of Kaid Moha ou Hammou.

The reasons for this lied in the weakness of the tribe demanding protection in addition to the possibility of insuring free movement from one tribe to another, thus allowing the free exchange of products; and finally the ability to rely on a solid support in case of conflict.

❖ The Making of Vassalage Bonds:

Vassalage bonds were made with the intervention of the assemblies. The assembly of the tribe which was in need of protection usually contacted the potential protector tribe's assembly. Each one of them appointed a guarantor who was usually the tribe's chief.

❖ Conclusion of a Pact:

The pact was concluded by word of the mouth without the requirement of taking Oaths. The protected assembly gave presents to the representative of the protecting tribe.

The turbans alone, with the exclusion of traditional shoes or burnouses, were exchanged between the guarantors.

Vassalage bonds were severed either by the mere will of the two parties or as a result of the treason of one of them. In the first case, the guarantors mutually returned the exchanged turbans and each one went back to his tribe.

In case of treason, the guarantor of the betrayed tribe soaked his burnous in mud. He then fastened it to the end of a stick and showed it to everybody, saying: “Here is the symbol of the traitors”.

The duration of the pact was determined by the two assemblies. Its renewal required their mutual assent.

❖ Obligations Resulting from the Pact:

The protecting tribe that was defeated by another tribe could not give up its protection rights.

The protecting tribe committed itself to:

a) Supporting the protected tribe when the latter was attacked;

b) Ensuring free passage through its territory to the people of the protected tribe;

In case the aggressors were vanquished, their possessions were plundered.

❖ Breaking up the pact:

The non-respect of its obligations by the protecting tribe immediately engenders the breaking up of relations between it and its protected tribe.

❖ Tribute:

In Zayan lands, no tribute was imposed on the protected tribes. Sometimes, people from the protected tribe brought, on the occasion of the Sheep Feast, some presents, such as carpets, horses, money, etc to the chief of the protecting tribe in order to consolidate friendship ties.

In case of attack, the protected tribe had to defend itself first, but when it realised that it was on the verge of defeat, it sent a messenger to the chief of the protecting tribe who immediately assembled his warriors and came to its support.

❖ Sanctions:

When the protecting tribe did not respond to this call for help, the protected tribe couldn't do anything except breaking up relations.

Protection called "*Amoor*"

❖ Definition:

Unlike the "Ztata" which is a temporary and paid protection that is offered in its habitual form to passing strangers or strangers travelling for business purposes, the "Amoor"is a type of protection which is free of charge and is usually of a permanent nature; it is offered to one or more strangers living in the tribe or having frequent relationships with the people of the tribe.

This type of protection may also be offered by a group of tribes to another group which is weaker than them.

❖ Formalities for obtaining "*Amoor*" protection:

Anyone looking for a protector slaughters, depending on his means, a calf, an ewe, a sheep or a she-goat in front of the tent of the person whose protection he is seeking and implores him to be his protector. The latter usually accepts without difficulty. After having put him up, he promises him help and protection in all circumstances.

It is not necessary to carry out other formalities to obtain the desired protection.

The propitiatory animal may be replaced by a loaf of sugar or a sum of money. The latter presents have no special appellation.

Such protection may be obtained by sucking the breast of a woman who is a relative of the person whose protection is sought.

This protection is mostly solicited by an individual who, at the moment of being hunted down, takes refuge in a tent so as to escape from being caught by his aggressor.

Depending on whether the protected person has sucked the breast of the mother or the wife of his potential protector, the latter will declare that he considers the former as his brother or as his son.

❖ General characteristics:

Members of the same tribe cannot put themselves under the protection of one of their fellow tribesmen except in case of murder.However; this type of protection was established among members of the same tribe a few years before the French occupation of Morocco.

As a result of the dissension between Ou L'aydi, the nephew of kaid Moha ou Hammou and the latter's sons, who had become powerful and gained much power, the Zayan block disintegrated. This resulted in the struggle among the parties.

Each grouping sought support from one of the antagonists who all belonged to the strong Imhzan clan and put itself under its protection. This is why each Amhzoun (singular of Imhzan)[24] has nowadays

[24] Family of Kaid Moha Hammou.

under his protection a certain number of tents in each grouping or each tribe of the Zayan confederation.

Diverse propitiation means are used not only to solicit protection, but also to get somebody's service. Thus, the borrower offers, as a present, to the potential lender an animal, some loaves of sugar or some money. These presents, whose value varies depending on the amount of the loan, seem to be used in order to disguise a loan with interest.

In order for the pact of protection to be finally sealed, it is not necessary for the future protector to carry out certain acts (such as crossing fingers, spreading his burnous over the applicant.)

Crossing fingers as well as the exchange of the turbans is rather specific for the promise or commitment by which two or several individuals swear to be mutually faithful.

A protected person, whether he be a stranger or not, can himself become a protector.

When a protection is accepted, the protector publicly announces that so-and-so is under his protection.

Protection is solicited by any person or grouping. It is mainly sought by the strangers who often visit a tribe or want to settle in it.

There is no difference between the protection offered to the strangers and that offered to people belonging to the tribe. Women are, because

of their sex, protected against all bodily harm, except in the case of an eye for an eye law which is always applied to them.

Servants, guards, marabouts and religious persons who cross a tribe, do not need protection. The first two groups are put under the tacit protection of the chief of tents and the latter two under that of the whole grouping.

❖ How Protection comes to an end:

Some people remain under the protection of the same person during the whole period of their life.

In principle, protection continues with the heirs of the protector or of the protected person. However, the pact may be brought to an end by the decision of either party.

Protection solicited and obtained for a specific problem ends with its solution. The pact also comes to an end when the protected person leaves for ever his protector's tribe. It is not necessary for the ex-protector to publicly announce this end: the news spreads by itself among tribesmen.

Protection cannot be imposed except in the following case:

When a protected person, who lives in the tribe, whether he belongs to it or not, dies leaving behind him only small children, the latter automatically find themselves under the protection of their late father's protector till their majority.

In Zayan lands, individual protection was offered by all influential people. As to collective protection, it was only provided by the Imhzan, particularly by Kaid Moha ou Hammou, his sons and his nephews.

Protection is also associated with certain places. For instance, when an individual takes refuge in a mosque, a school tent or a shrine, nobody can hurt him for fear that he would incur divine curse upon himself and also risk reprisals from the inhabitants of the district.

If the escapee takes refuge in a market, his aggressor should not attack him. If he does not respect this rule and causes a great disorder, the chief of the market slaughters a bull and distributes its meat among the Assembly members. The aggressor is forced to pay the cost of the slaughtered animal.

Sanctions Pertaining to the Rules of Protection

Effects of Protection:

The protector has to stop all legal proceedings started against the protected person, including those taking place before protection.

When it is a question of debt or blood money, the protector will make arrangements with the creditors or pay them; he provides one part of the money while the remaining part is provided by all the district members who support each other. This solidarity is extended to cover the payment for mistakes made by the protected person. If the latter abducts a woman, the compensation will be shared by the protector, the protected person and the members of the district.

If he is a criminal, he is taken to safe place where he remains till the problem has been solved.

“Amoor” is a free of charge protection, for the protected person.

1. Sanctions concerning the vassal’s obligations:

If the protected person puts an end to the pact of protection, he does not owe any type of compensation to his protector. But he exposes himself to the risk of being robbed by the latter if he does not put himself under the protection of another distinguished person who will defend him against his former protector.

If a third party is chasing a protected person, the latter's protector has to defend him in all cases, and even to have recourse to force when the need arises for this. In such case, his entire group should support him.

Acts committed against the protected person and which put at stake the duties of the protector are those which endanger the personal security of the former or insult his honour.

When an individual violates the laws of protection, the protector can accept, instead of taking revenge by using arms, pecuniary compensation whose amount is one hundred *Reals*, it is called "*L'ar*" (compensation for insulting honour).

If the protected person is killed, the murderer has to pay in addition to the "*L'ar*", blood money to the heirs of the victim. In case they do not exist, blood money goes to the protector.

2. Sanctions concerning the obligations of the protector:

If the protector does not meet his obligations, no sanction or compensation is imposed on him, but his act is disapproved of and he is rejected by all the members of his clan, who treat him as a coward.

To make known this bad act, the protected person uses the following means of publicity: he goes to the market carrying a long stick at the end of which a piece of cloth is fastened; he holds up this type of flag and starts waving it while running in the middle of the crowd saying: "Be disgraced o coward who has not honoured the obligations of

protection!”The awaited result materialises immediately: the relatives of the unreliable protector intervene and stop the trick of the protected person by promising him to “solve the problem” which they do afterwards.

Another means of publicity used against the unreliable protector is to make piles of stones at the conjunction of roads which lead to the market. These piles of stones remind the passers-by of the protector’s betrayal and perpetuate its memory.

Theft

In Case of Solidarity (Tada) – In its absence – Civil Compensation – Sanctions – The Guarantor – Killing of a thief caught red handed.

According to custom, the thief should restore the stolen items to the victim; sometimes, he is also forced to pay a fine:

- **In the case of "*Tada*" (pact of solidarity)**, acts of theft are forbidden between two tribes allied by a pact of solidarity. If an act of theft is committed, there is a need only for civil compensation; no fine is imposed on the wrongdoer.
- **In the case of the non-existence of a "solidarity" pact**, and particularly when the thief comes from his victim's tribe, the latter asks directly the thief's district for compensation. If this step appears to be fruitless, the case is taken before the tribe's chief, who summons the thief and forces him to restore the stolen items.
- **Sanctions:** In addition to this, a civil compensation is imposed on the thief who should pay the chief's messenger ten "*Reals*" compensation. The chief,too, gets compensation in the form of a fine for the disturbance of public order.

❖ **The Guarantor or "*Amasay*":**

Neighbouring tribes always appoint guarantors who ensure that no harm is done to their good relations.

When a theft involves two people coming from neighbouring tribes, the guarantor of the thief's tribe is asked by his colleague from the victim's tribe to solve the problem. No action is taken against the guarantor who fails to fulfil his obligations.

However, the victim can avenge himself by getting hold of a caravan belonging to the thief's tribe when it happens to cross his territory. This caravan is not freed till the stolen items have being restored to the victim.

❖ The Killing of a thief caught red-handed:

The killing of a thief, though caught red-handed requires paying blood money to his family.

The Informer (“*Abchchar*”)

❖ Definition:

The name “*abchchar*” is given to the informer who, in return for a sum of money, accepts to provide all information leading to the restitution of the stolen items.

❖ Role of the “*Abchchar*” or informer:

The informer is not obliged to disclose the names of the involved thieves, and the victim does not have the right to mention the informer’s name, as well. The informer is often a member of a group of thieves; he serves as an intermediary between the victim and the latter.

❖ Taking action against the informer:

No action is taken against the informer who has made a mistake. He does not get his reward till the victim has got back his stolen possessions.

When stolen animals are found in the possession of a thief, he has to restore them to the victim and is not forced to pay back the informer’s reward.

When stolen animals are discovered in the possession of other people, the latter have to deliver them but are not forced to pay the informer’s reward. They can take legal action against those who have sold these animals in the first place.

To get back his stolen property, the victim has to prove that he is the real owner by providing witnesses,.

Private Law

Slaves

❖ Slavery Sources:

Slavery was widespread among the Zayans. Many households had as slaves blacks or white Muslims, or even Imazighen coming from the same tribe. Transactions took place by mutual agreement.

Blacks generally came from Sub-Saharan Africa. Prisoners of war were never enslaved. It was preferred to ransom them. There existed in every market a place where slaves were sold and bought. Merchants were mostly Arabs from the South.

❖ Slaves' Condition:

When a father and mother were slaves, their child was born a slave. When the mother alone, was a slave, the father legally recognised the child and the latter became free. When the father was a slave, his child was a slave, too.

The Zayans still remember, today, the selling of children in time of famine. These sales were final; the sold child could not be re-bought afterward. These transactions are considered as the simple exercise of a right, for some masters sold children, without needing money. These children were often sold within the tribe itself but, at times, outside it to the neighbouring territories, preferably to the M'Rabtin and the Aït M'Guild.

For the transaction to take place, there is a need only for an agreement between the seller and the buyer. If the slave runs away to the house of his former master, the latter has to give him back to the new master; he cannot merely pay back the selling price. Neither time nor place can grant the slave his emancipation. His master takes him back wherever he finds him.

In Zayan country, there were more male slaves than female ones. An Amazigh could get legally married to a black woman, but this rarely happened.

The slave was hold responsible for his offences. The offended person could take revenge on him, either for an insult or a murder. In the latter case, however, compensation should be paid to his master (some kind of blood money). To get a compensation one had to ask the master who was expected to give it. Whenever a slave committed a theft, it was his master who had public liability of the committed a crime; it was also his master who paid blood money. The master could, in no circumstances, give the slave as compensation.

❖ The Master's Rights:

The master had the right to punish, to sell and, in principle, to let live or kill his slave. However, as to the latter point, the custom was more lenient in reality, for the killing of a slave was an extremely rare case. Nevertheless, it was acceptable that a master resorted to killing his slave in case he caught the latter committing adultery with one of

his wives. The master's right was exercised over the territory of all tribes, and it was not necessary to have special stipulations.

The slave might be allowed by his master to have personal property. Usually, the master gave his daughter in marriage to his slave who became a Shenguiti (someone coming from Shenguit which is a region in today's Mauritania). The children ensuing from this union were born free.

❖ Emancipation:

Custom allowed for the emancipation of slaves. But, the master had to set free his slave in the presence of the Jema′a (the tribe's Assembly). The emancipated slave was consequently considered as a member of the tribe.

The Family

The family consists of grand parents, parents, brothers and sisters, uncles, cousins and nephews. Other groups are also part of the family:

- foster children and natural children born to women or young girls, members of the family;
- men who get married to women members of the family in return for their commitment to work for the latter's chief ; they are given various names ,such as *amhars*, *amazzal* or *shenguiti*; their offspring acquire family membership ,as well.

It is worth noting that we will see, in due course, how the *Shenguiti*, who is considered as a family member, does not have the same rights as the legitimate family members.

Marriage

❖ Validity:

The custom allows marriage between all persons on condition that they have no blood ties. Therefore, marriage is forbidden between full brothers and sisters, between half brothers and sisters, between uncles and nieces, between aunts and nephews, as well as between males and females who have become brothers and sisters by means of being fed from the same breast, even at different periods.

A man cannot marry two sisters at the same time, or any other women who have blood ties or who have been fed from the same breast. This restriction ends in case his wife dies or he divorces her; then he can get married to her sister.

Marriage is practiced only among Muslims. When an Amazigh woman chooses willingly to marry a non-Muslim, she is considered as being in a state of cohabitation. Her family does not ask for a dowry; worse than that, they disown her.

Opinions are divided on the issue of whether marriage is allowed between a Muslim man and a Christian woman or not.

There is no rule in this respect, and no case of such a marriage has ever been witnessed in the Zayan tribes. While some do not accept this marriage, others pretend that the union between a Muslim man

and a Christian woman is allowed. However, this permission would not be tolerated between a Muslim man and a Jewish woman unless the former manages to convince the latter of abjuring Judaism. If he does not manage, the marriage is not accepted, and the wife who preserves her faith is considered as a concubine.

❖ Conditions:

Except for these cases, there is nothing else which may stand in the way of a marriage. Marriage is tolerated between free men and female slaves on condition that the offspring inherit the father's status.

Persons guilty of adultery can get married on condition that the deceived husband does not blacklist his rival at the moment of divorce, namely, that he does not inform the Assembly of his objection to this union.

Polygamy is usually practiced. In principle and according to Shari'a (Islamic Law), it is not allowed to have more than four legitimate wives; however, common law allows a man to have more than this. In fact, anyone who has the necessary means can have in addition to his four legitimate wives as many female slaves as he desires. Children born of the latter have the same rights as those of the children born of legitimate wives. Polygamy is favourably accepted by the Amazigh woman, for it provides her with a precious help in housework tasks.

❖ Consent:

When a young man is under-age, his father can choose a wife for him without giving him the right to protest. If he refuses to take part in the conventional wedding, which rarely happens, the fiancée cannot be taken back by her parents till one year has elapsed. The young man can persist in his refusal but exposes himself to parental curse.

If at getting married, a young man is pubescent, he can insist on living in a separate tent by asking of the Jema'a (the Assembly) to support him. If his request is accepted, his father should give him his share of the family heritage.

When the father is dead, the eldest brother or the mother has the right to arrange the marriage of the under-age boy.

Sometimes the father may choose a wife for his son before the latter reaches puberty.

As to the young girl, she is considered marriageable as soon as she begins to menstruate. This change is noticed by female relatives or friends and confirmed by her observation of fasting Ramadan. However, a young girl may be married off to somebody much earlier than this stage. Sometimes, this happens immediately after her birth, but the husband cannot consummate the marriage till she has reached puberty.

The father or the chief of the tent has the right to marry off a young girl over whom he has authority to anyone he likes.

When the father of a young girl is dead and she has no male relatives, the running of the tent affairs is taken by a woman (mother, sister, aunt, etc.) who has the same right as the father in terms of choosing a husband for the young girl.

❖ **Divorced women:**

A divorced woman may also be married off again by the chief of the tent. She has no right to refuse what is offered to her.

A divorced woman may be married off to her lover and the husband cannot object to this if he has not specified his objection to this marriage at the time of divorce.

❖ **Widows:**

A childless widow is not free to act as she likes. Her father, or anyone who has authority over her, preserves the right to marry her off to anyone he likes.

A widow with male children is free to act as she likes and is no longer under the authority of her father. Her male children can object to her second marriage by buying her from their grandfather or from anyone else who has authority over her. This custom is not widespread and exists only among certain parts of tribes.

❖ ***"Taberraht"*** (the woman who publically announces her marriage without her parents' approval)

There are cases where a woman chooses her future husband against the will of her parents by escaping to his place. She is given the name

of '*Taberraht*' because she publicly announces her desire to get married to someone. The wording is as follows: "So and so has chosen so and so as a husband". The family of the announced husband has to satisfy the desire of "*Taberraht*" and give the required dowry to the latter's father in order to avoid falling into disrepute.

It worth noting that as far as marriage is concerned, there is no preference right or pre-emptive right altogether.

Financial Conditions Related to Marriage

❖ Husband's Obligations:

To contract a marriage with a woman, the future husband has to give to the parents of his wife a sum of money or a number of animals, namely a dowry.

This dowry is non-refundable among the Aït Taskert, the Aït Nouh, the Aït Herri, the Aït Arouggou and the Aït Sidi Bou ′Abed tribes. The dowry consists, sometimes, in one or more pieces of land. In such a case, the person who receives this type of dowry cannot give it up as long as the wife is alive. In case of divorce, real property received as a dowry should be restored.

The amount and importance of the dowry are variable depending on the woman's family social status, her beauty, her qualities, and housework skills. Usually, the dowry varies between ten and six hundred *Reals*.

It is good to offer, in addition to this amount, presents in cash to certain male relatives of the future wife so that they would work towards the success of the negotiation.

The husband-to-be makes his request by sending the hamlet's assembly to the father of the future wife. This request is accompanied by the sacrifice of a sheep. If an agreement is reached, the amount of the dowry is immediately specified; otherwise, the dowry is negotiated

in the presence of the assembly and of the Imam who will consecrate the union. Once an agreement is reached, the dowry's full amount is given to the father of the future wife, or failing that, the person who has authority over her before the consummation of the marriage.

❖ Role of guarantors:

When the future husband cannot pay the full amount of the dowry within a given date, the deadline may be extended on condition that he should find a guarantor. If he fails to pay before the deadline, his parents-in-law turn to the guarantor for payment. If the latter fails to pay, for one reason or another, the wife may be taken back by her parents and give back to the husband the amount of money they have already received.

When a wife is divorced and the first husband has not received the amount of dowry he has paid, the second husband pays him. The dowry should be given back to the heirs if the husband dies before the consummation of the marriage, even when the conventional slaughtering of a sheep has already taken place.

❖ Additional Stipulations

The future husband optionally offers a present to the father and to the mother of the young girl he intends to marry. For the first, it is mainly a pair of slippers, and for the second a scarf. These presents are not part of the dowry and cannot be retrieved later.

The future husband has no obligation towards his fiancée during the period separating the approval of the marriage and its consummation. Sometimes his parents can visit the fiancée to whom they offer a robe, some henna, and one or two loaves of sugar.

❖ The Trousseau

The bride's trousseau is provided by her father, depending on the latter's social status and financial situation. When he is rich, the trousseau usually consists of two carpets, two mats, three or four pillows, two small mats, clothes, a pair of silver bracelets and earrings , a mattress filled with wool and diverse objects. But when the father is poor, the trousseau consists merely of a small mat, a mirror and a tube of antimony powders.

Kitchen utensils are not considered as a part of the trousseau and are not supplied by the bride. The value of the trousseau cannot be deduced from the dowry.

In case of divorce, the trousseau remains as property of the wife. If the husband has sold part of this trousseau without his wife's permission, he should pay her back.

Since this trousseau is optional, a man who marries a girl coming from a very poor family offers her a trousseau. The value of this trousseau is not considered as part of the dowry[25], and the husband has

[25] This is not the case among the Ayt Harkat of Khenifra where the trousseau may be bought by part of the dowry or by its whole amount.

By the way, here are some of the differences observed among the Ayt Harkat of Khenifra: the trousseau is brought by the money taken from the dowry. This is done by the bride's

the choice of taking back, at the time of divorce, the clothes or objects that are part of the trousseau he has bought in the state in which he finds them.

Sometimes, the father of the young girl may not require the full amount of the agreed upon dowry from the husband.

In fact, and in spite of what might be said, Imazighen are not far from considering marriage as the purchase of a wife[26]; moreover, they don't consider it as a union between human beings who love each other. The purpose here is mainly to take advantage of the services that the wife can render to the tribe through procreation and to her household through work in the house and in the fields, in addition to all kinds of chores.

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father. The value and the composition of the trousseau depend on his will. The trousseau or its equivalent in money belongs to the husband in all cases, since it is always bought by the money coming from the dowry. In case the husband dies, the trousseau becomes the property of his heirs. In case of divorce, only the part of the dowry which is not used to buy the trousseau is refundable. In fact, since a trousseau always consists of fungibles that are most of the time lost or used in the husband's tent.

In order that the trousseau should not be refundable, it is necessary that the husband specifies, at the time of drawing the marriage certificate, the importance of the trousseau and its effective possession by the bride when she arrives at his place.

[26] Different authors have tried to demonstrate that marriage among Imazighen should not be considered as a purchase. It might be compared to some kind of 'antichresis'.

Formalities of marriage

A man and a woman are considered husband and wife at the end of the ceremony during which the former asks for the latter's hand in the presence of witnesses; namely, before the consummation of the marriage. The ceremony is attended by the father of the fiancé or any other male relative who represents him, the father of the fiancée or a male relative of hers and three members of the Assembly. The presence of the local mosque's imam is optional. A sheep is slaughtered on this occasion and those present eat meat dishes and drink tea.

The demand is expressed as follows: "*Oh so and so! I ask for the hand of so and so in marriage on the behalf of so and so, according to the Sunna (Law) of Allah and His Prophet*". Marriage is thus official from this time onwards. The father of the new husband offers some money to the women who make special cries of joy that announce the good news. In Zayan lands, there is no guarantor or a written marriage certificate. However, the presence of members of the Assembly in this ceremony is compulsory.

A husband can divorce his wife even before the consummation of the marriage, but his father-in-law cannot refuse to deliver his daughter.

Marriage Evidence: Invalidity Cases

❖ Marriage Evidence:

The marriage evidence accepted by custom lies in the testimony of the Assembly members, of the Imam and of the parents who have attended the wedding ceremony. If in time of proving a marriage, none of the above witnesses is still alive, there is recourse to the testimony of the wife's father, and the number of cojurors he should find varies, depending on the importance of the dowry.

❖ Invalidity cases:

Custom admits several cases of the invalidity of a marriage:

- When a young girl is given in marriage as a virgin and, at the consummation of the marriage, the husband finds out that she has been deflowered, he can ask for a divorce.

- As the custom does not allow for the presence of a witness in the bridal suite, the bridegroom should provide evidence by asking a matron to examine the bride.[27] However, an arrangement may be made between the husband and the bride's parents so as to preserve the marriage. This consists in reducing the dowry's amount. If no arrangement has been made, the husband gets back the dowry or the

[27] If the matron confirms the bridegroom's accusation, the village people make the bride ride a donkey and go around the village stopping at each tent's door so as to cover her with shame and insult her parents.

part which he has already paid. However, all the expenses resulting from the conclusion and the celebration of the marriage are not paid back to the husband.

- When the husband is impotent, the wife can ask for divorce by exposing her grievances to the local Assembly. The latter asks the husband to consummate the marriage within one year, starting from the day the wife has sued him. If the husband rejects this accusation, the assembly designates an observer who should be an eye witness of the couple's sexual intercourse. If it appears from the observation that the wife is lying, the husband divorces her but gets back the dowry. On the contrary, if the complete impotence of the husband is confirmed, he should divorce his wife and give up the dowry.

- If at the conclusion of the marriage, the two parties have agreed that the dowry is going to be paid in instalments, and the husband does not fulfil his promise in this respect, the wife can run away on the order of her father whose authority she depends of.

The annulment of the marriage is pronounced by the Assembly and the amount of money paid by the husband should be restored to him by his wife's family. However, when the marriage has resulted in the birth of children, it is the Assembly which intervenes once again and urges him to pay the remaining part of the dowry.

Marriage Obligations

❖ The Husband's Obligations towards his Parents-in-law:

The husband is not required to fetch the woman he has married from the latter's family house. His refusal may not be necessarily motivated. In such conditions, the divorce should be pronounced and the husband gets back the dowry he has provided.

❖ The Husband's Obligations towards his Wife:

The husband should provide for his wife and ensure for her a lifestyle within his means.

If he doesn't fulfil his marital duties, the wife can complain to her parents first and then to the Assembly. If the husband persists in his attitude, she can ask for and obtain divorce.

The custom does not regulate the right of the wife to visit her parents. She can call on them whenever she likes, but the husband has the right to refuse.

❖ Cohabitation :

When a man gets married to more than one woman, he has to equitably divide his nights among his wives.

If he gets married to a virgin, he has to spend the first seven nights with her after marriage. As to the days he can spend them the way he likes.

Old wives can also claim their rights. If one of them is neglected, she can complain to her parents and to the Assembly.

❖ A wife's Duties towards her Husband

a) Obedience:

A wife has to obey her husband and be faithful to him. She should consider the household she has become part of as hers and defend its interests on all occasions.

However, her husband should impose to her only tasks that are conventionally assigned to women and which are useful to the household, the hamlet and the tribe.

The husband can exert on his guilty wife the right to punish her, which is, theoretically, without limits. This right ranges from simple blows to wounds and even to death.

A husband who wounds or kills his wife may be sued before the Assembly which may condemn him to pay compensation, depending on the seriousness of the case.

The wife is required to follow her husband wherever he chooses to reside, except when at the conclusion of the marriage the contrary

has been specified, or when the husband has the reputation of being cruel to her.

b) Work:

The wife is obliged to carry out all the housework and other tasks. She is the one who fetches water and collect firewood. However, her husband cannot impose on her particular hard tasks which are not usually assigned to women such as harvesting, for instance.[28]Yet, if he forces her to execute them, she can complain to the Assembly, which may put an end to their marriage, by forcing him to divorce her.

A wife who is incapable of carrying out housework tasks may be ordered to acquire the notions which she is not familiar with. The evidence, establishing her ill will or laziness, collected against her by her husband, is used by him as an argument of defence in case she asks the Assembly for a compensation relating to the cruel treatment she might have suffered.

When the chief of a tent has many wives, it is his mother or his eldest wife who has full power with regard to the distribution of the housework tasks to be done, both inside and outside the tent.

[28] It is very rare to see a woman harvesting.

Rights over Children

At every age, a child should show respect to his father and mother.

The Father alone has authority over his under-age children and his adult ones who still live with him.

In general, a son remains under his father's authority as long as he is under-age, or when he is of age but continues to live in the same tent with his father.

In principle, an adult son can require of his father to help him set up his own household. However, an under-age married son may get this privilege if, with the consent of his father, his mother accepts to live with him. This separation, however, does not confer on the son the right to give up property items belonging to the family, without the father's consent. Moreover, the father always preserves the right to control his son till the latter reaches adulthood.

The daughter remains always under the authority of her father as long as she is single, divorced or a widow without male children.

The father has the right to punish his under-age son as well as his adult daughter even when she is married, whether she has children or not. He can even sell them in case of dire conditions (such as in time of famine).But he can never disown his offspring. Such a case has never occurred in Zayan tribes within living memory.

❖ A Father's Rights over Children's Possessions.

Every adult son who has not left paternal home, or any under-age son who has set up his separate household in the conditions cited above, is submitted to parental guardianship with all the prerogatives that it confers.

A daughter is submitted to this guardianship till old age, when she is unmarried or a widow without male children.

However, the father cannot take back the possessions he has offered to his under-age son who has set up a separate household.

While alive, a man can make a will in which he offers to an under-age child who is not his own son a proportion of his property after his death. However this proportion should not harm the interests of the other heirs.

When the father dies leaving other children, the under-age heir takes from the property the portion offered to him by his father while alive. The remaining part is then divided among the other heirs and him.

There are cases where an under-age child has his own possessions which are completely distinct from those of the father.

Sometimes, to put an end to quarrels between his two wives, the husband offers to the one who has an under-age child to put her in a separate tent.

The father preserves the management of the property he has given to his under-age child till the latter reaches adulthood. However, this property remains fully the latter's own.

❖ A Father's Duties towards his Children:

As long as children live under his authority, the father has to provide accommodation, clothes and food for them. Moreover, as soon as one of his daughters gets married, he is no longer responsible for providing these things to her.

❖ A Mother's Rights over her Children and her Duties towards them:

The mother's rights and duties with regard to her children are fixed by the father as long as he lives.

When she is a window and has children, she acquires the rights and duties of the father in this respect. Moreover, she takes care of the product of their work.

❖ Children's Rights over their Parents and their Duties towards them

An adult son can ask his father to allow him to set up a separate household. However, he should implore the Assembly to intercede with his father. This setting up of a distinct household results in the division of property. This partition, which involves the division of movables and immovables, should be carried out in proportion to the legal claimants.

The son who has obtained the right to set up his separate household receives only his normal share.

The partition is carried out under the supervision of the Assembly and in the presence of the legal claimants, when all of them are pubescent. It is obligatory when the married or adult sons provoke it.

The son is required to receive into his home and take care of his infirm or too elderly father or mother. If he refuses, the Assembly can force him to do so. However, the son cannot force his aged father to stay with him, nor can he force his mother to leave his father and come to live with him.

As to a married daughter or a widow with children living in a separate tent, they will not be obliged to receive into their home their infirm parents.

A widow who has movables and immovables is not required, in a second marriage, to mix her property with that of her husband, she can set up a separate tent of her own and manage it herself. However, her father, or failing, her nearest male relative has the right to control her property. He can hinder her from squandering it by all means he deems appropriate. If this woman dies without leaving any legitimate children, her property goes to her family.

If children are born from this new marriage, the mother's property becomes theirs. If they haven't separated their tent from that of the father, it's the latter that has the use of it.

If there are children of her first marriage, they also receive their share of the property left by the mother.

Property acquired during marriage, as well as the contribution made by the wife but not specified in the marriage contract before the Assembly goes to the husband. However, in case of dispute, the wife can demand a solemn vow of the husband.

On the contrary, the possessions declared by the wife on the day of marriage remain her own property. The yield of the livestock she has brought with her belongs to her. It is the same for her possessions, furniture, clothes and jewels.

However, if she fails to declare them to the Assembly, their ownership will not be reserved for her alone; they will be confounded with those bought by her husband.

If it is the husband who manages the wife's property, the wife has the right to control his management and in case she finds that he squandering it, she can ask for her parents' intervention.

In case of divorce or death of the husband, the wife who is childless and owns property has to go back to the house of her father who takes possession of it.

Dissolution of Marriage

❖ Absence:

When a husband leaves his village without indicating the probable length of his being away from home and his absence lasts to the point where the resources left for his wife have been completely used up, the latter has the right to ask for divorce. However,she cannot get married to another man unless two years have elapsed since the departure of her husband.

When the two years waiting period has come to an end, the wife's parents can give her in marriage to another man, but the missing husband's parents can delay the dissolution of the marriage for a period of three months by providing the daughter-in-law with food and clothes.

If the dissolution of the marriage is the result of the husband's missing, the dowry is preserved by the wife's parents. However, if later the husband reappears, he has the right to get it back.

On his return, the husband who finds his wife married to another man cannot annul the second marriage if the rules described above have been observed.

If the Assembly has not respected the expiry of the allotted waiting period, the second marriage is declared void and the returning husband takes back his wife.

During the waiting period, the wife should display good conduct, do the housework in her husband's tent, or failing that in her parents-in-law's tent. If she is a mother, she assumes the control and guardianship of her under-age children.

❖ Dissolution of Marriage by the Will of the Spouses:

A. By the Will of the Husband or Repudiation:

The husband's right to repudiate his wife is without limits.The adult husband can repudiate his wife even before the consummation of the marriage. As to an underage husband, he cannot do so expect with the consent of his father or guardian. In both cases the dowry is given back to the husband.

On the contrary, if a husband repudiates his wife who was given to him in marriage as a virgin, he has to give up a certain percentage of the dowry as a compensation for the loss of her virginity. This, usually amounts to ten *Douros*.

❖ Formalities:

It is not enough that the husband pronounces the repudiation of his wife to the latter without witnesses: evidence of this dissolution cannot be established except by the testimony of two honourable persons.

There are two types of repudiation:

1. The husband repudiates his wife by pronouncing the following expression: "I repudiate you" which is pronounced only once and the

wife says: “I accept”. In this case the husband has the choice of taking back his wife within two weeks following the repudiation. The wife’s family cannot refuse. However, in case of adultery, occurring during this period, the former husband cannot sue the culprits. A divorced woman cannot get married once again till a three-month waiting period has elapsed. However, her family can promise to give her in marriage to someone else immediately after her repudiation.

2. The husband repudiates his wife by pronouncing the following expression: “I repudiate you, three times” which he sometimes repeats three times. In such a case, the husband cannot take back his divorced wife until she has been married to another man who dies or repudiates her.

In both cases, when a husband wants to repudiate his wife, he calls a group of people, more often than not, chosen from his hamlet and suited to be witnesses. A group of people coming from the wife’s hamlet may also be invited, but this is optional. The presence of the wife’s parents is essential. The announcement of the repudiation should take place before this assembly of people. The condition and the method of refunding the dowry are negotiated before this assembly. The role of this assembly consists in taking notice of the repudiation so as to testify in case of need. The drawing up of a certificate is not necessary.

The husband who repudiates his wife cannot immediately require the refunding of the dowry paid by him at the time of marriage. He has to

wait for a period of three months in order to give to the divorced wife the necessary time to get married again.

Following the reached agreements, he often waits till his ex-wife finds a new husband, even if this takes some years after divorce. It is said that "he is waiting for his frontal lock!"[29]

A guarantor may be provided. He should be chosen by the husband. At the expiry of the allotted waiting time, the husband can require the refunding of the dowry.

In case the ex-wife's father fails to pay back the dowry, the guarantor is responsible and commits himself to pay from his own money. When there is no guarantor, the husband has the right to take back his ex-wife in return for the previous dowry.

B. Dissolution of marriage by the will of the wife:

A wife may ask for and get a divorce only in the following cases: the husband's sexual impotence, his repeated and unjustified ill-treatment of the wife, lack of food and clothes, his giving up of all intimate relations in favour of a new wife. Physical cruelty is not considered as a sufficient motif to obtain divorce.

[29] The « Frontal lock » is carefully looked after by every Amazigh woman. It is given some supernatural forces. It is considered as a good or bad omen depending on whether it spreads on the right or left side of the frontal bone. The above expression is used to tell a husband who has just divorced his wife that he can not get back the dowry he paid at the moment of marriage unless the chance allows his ex-wife to get married once again.

To obtain divorce, the wife applies to the Assembly, asking them to force her husband repudiate her. She has to provide the necessary witnesses to support her own account, and all evidence in her favour. The minimum number of witnesses is three; they should all be distinguished persons.

In case of impotence, a test is imposed on the spouses under the same conditions described above in the chapter on marriage.

To bring the action of this test against her husband before the Assembly, the wife resorts to her right to run away to her parent's house.

When the husband's impotence is proved, divorce is pronounced by the Assembly.

The husband does not lose his right to get back the dowry except when the wife has complained about his impotence and remained virgin.

C. Dissolution of Marriage by Mutual Agreement:

It has been mentioned above that the wife can never get her divorce against her husband's wishes, except in cases accepted by custom and which have been mentioned earlier.

Sometimes, a wife who frequently runs away from the house, or displays ill will in the fulfilment of her marital duties, leads her

husband to divorce her. Sometimes, she leaves her marital house and takes refuge in her parents 'home. When she refuses to return to her marital house, her husband should take the necessary conciliatory steps with his parents-in-law through the intervention of distinguished persons before he exercises his right to force her back home.

During the period of the wife's running away from the marital house, it is her own parents who provide for her. But, when she has taken under-age children with her, it is the husband who should pay all the expenses engendered by his children's stay at their grand parents' on the return of the wife to her husband's house.

When the wife takes refuge in the house of an individual who is neither her relative, nor a known lover of hers, the husband can require her immediate return and this individual is not supposed to pay him any compensation.

However, when she runs away from her marital house at the instigation of or in complicity with a man who is known to be her lover, the husband can demand her immediate return and force his rival to pay him two hundred *Reals* compensation.

These disputes are often settled in a violent manner, and most of them are at the origin of a series of vendettas among the families of the husband, the wife and the lover.

In both cases, when the husband agrees to repudiate his wife, he gets back the amount of the dowry he paid on the day of marriage.

Effects of Marriage Dissolution on The Widow, Children and Unborn Children

A widow or a divorced woman cannot get married again till an expectation period has elapsed.

The expectation period for a widow is four months and ten days, starting from the day her husband died. That of a divorced woman is three months from the day legal separation has taken place.

The woman should respect this expectation period even when she is repudiated before the consummation of the marriage. As has been mentioned above, the husband can take back his wife within a fortnight since the day the repudiation has been pronounced, if it has been pronounced only once. If the wife is taken back within this period, no compensation is due to the husband.

In case of pregnancy, the divorced wife or widow cannot get married again till the child is born.

The divorced woman always finds herself under the authority of her family.

❖ The widow:

The parents have the right to get back a widow. She is not considered as part of her late husband's legacy, and her fate is not subject to the decisions of the latter's heirs.

She is not forced to marry her late husband's brother. This second marriage cannot be contracted except by her own family's agreement. This practice is very rare in Zayan lands, where it is not accepted by public opinion.

The brother of the deceased husband cannot force his sister-in-law to remain with her children. But, she can require it herself, without needing his consent or that of her family.

❖ Children:

The husband has the right to keep all his children, girls and boys alike, from the moment they are weaned.

The divorced mother or widow has the right to keep the baby she is breastfeeding till he is two years old, which is the minimum age.

The husband, or his heirs, should provide her, during the whole of this period, with a monthly maintenance called "nursing". This maintenance, calculated according to his financial situation, is often deducted from the total amount of the dowry.

The mother has the right to visit her children who under the guardianship of their father. Similarly, the children have the right to visit their mother.

A woman who goes to visit her children should be well-received by her former husband who must put her up during the whole period of her stay. Similarly, children should be given the same reception when they go to visit their mother who is married to another man.

The parents of the deceased husband cannot require of the mother to stay with her under-age children, yet they may convince her of permanently staying with her children with the permission of own parents. In this case, she can have the management of her children's property, but she is thus subject to the control of her parents-in-law whom she should consult for certain transactions, such as the selling of movables and immovables.

❖ The Fate of Unborn children:

Among the Zayans, custom allows for asking the wife whether she is pregnant or not at the dissolution of marriage, either by repudiation or by the death of the husband.

A. If she denies being pregnant, it is necessary to wait for three months. At the end of this period, if no signs of pregnancy are apparent, but her former husband or his family, (in case of his death) persist in thinking that she is pregnant, the ex-wife can prove the contrary by taking a solemn oath at the shrine of a saint or in front of the hamlet's mosque in the presence of her ex-husband or a member of his family. In such circumstances, the woman's oath should always be supported by that of her mother, when alive, or by that of her sister.

If the ex-wife happens to give birth to a child after her oath, her former husband cannot take legal action for the recognition of the child as his.

B. If at the dissolution of marriage, the wife did not declare that she was pregnant and her ex-husband or his family did not deem it necessary to question her about this subject, two cases may ensue from this:

1. If she does not get married to another person, the first child who gets born belongs by right to her ex-husband, even when the childbirth takes place many years after her divorce.

2. If she gets married again and gives birth to a child in her second husband's place ,two cases arise: when the child is born within a six month's period, starting from the day the new marriage was contracted, the baby belongs to the ex-husband, even if the mother attributes him to the new husband. On the contrary, if the birth takes place after six months and the paternity of the new born baby is disputed, the last word belongs to the woman. It is her who points out the father and supports her statement by her own oath and that of her mother. When the latter is dead, the sister takes her place.

3. If she declares at the solution of marriage that she is pregnant, the baby she has in her womb or at least she thinks she has, unquestionably belongs to her ex-husband, even when the childbirth takes place a long time after the usual gestation period, which amounts

to approximately nine months, and even during one of the successive marriages which she may have contracted.

As to the idea of the “sleeping” foetus, there is no specified waiting period and doubt remains for good. There are women who pretend, during the whole of their life, to have a “sleeping” foetus. Actually, women exploit this belief with the aim of taking advantage of it.

Sometimes, a husband may die leaving several possessions but has no male heir. His wife may claim that she has a “sleeping” foetus so as to allow, if need be, a potential natural child, whom she may give birth to later , to take advantage of the inheritance.

In fact, to inherit, one should exist at the moment the inheritance procedure is started. Yet, the baby in the womb is considered as existing. However, only an apparent and recognised pregnancy keeps the inheritance outstanding and its settlement can take place only after the childbirth.

A wife who pretends to be pregnant at the death of her husband should, before his burial, support her claims by performing a practice which consists in passing three times under the deceased husband’s stretcher or under the animal (mainly a mule) which carries his stretcher.

C. When a wife declares during the dissolution of marriage that she is pregnant, but at the birth of the child she denies that her ex-husband is the father, two cases may arise:

1. If the wife denies that her ex-husband is the father, the latter or his family, when he is dead, should provide twelve witnesses in order to confirm that the ex-wife has admitted being pregnant at the dissolution of marriage.

2. When she pretends that she had a miscarriage, she should prove this either by providing twelve witnesses or by two oaths: one taken by herself and the other by her mother or her sister when the latter is dead.

The man pointed out by a woman as being the father of her child always accepts this paternity, for it is a real advantage to his family.

For the same reason, a husband who has been away for a long period and who, on his return, finds out that his wife has given birth to one or more children during his absence does not disown them at all. The following proverb is to the point here: “Anything brought by the irrigation channel becomes the property of the field owner.”

Workers, coming from the desert areas of southern Morocco, who are absent from home for long periods of time and who find, on their return, that their wives have given birth to children conceived in their absence usually say: “Praise be to God! We are blessed. We father children whether we are present or absent!”

❖ Different Cases of women who declared that they were pregnant at the dissolution of marriage.

1. A divorced woman does not need to wait till after childbirth to get married to another man, even when appearance corroborates her claims. If she does so, the new husband, who should be notified, is responsible for the safety of the presumed foetus. In case of miscarriage, compensation is required of him. If he refuses to pay, pretending not to be the cause of the accident, he should provide forty or twenty oaths, depending whether the sex of the foetus is male or female in order to exonerate himself.

2. A widow can wait till her baby is born at the house of her parents-in-law, except when her own family refuses.

3. Divorced or widowed, a woman can get married again; it is her new husband who should provide for her. He cannot demand any material compensation to the ex-husband who should only provide the childbirth expenses, if a child of his is born.

However, as the mother should keep her child till the minimum age of two years. The father, or his family, is required to pay a maintenance allowance which varies, depending on his financial situation.

4. A divorced woman is free: her ex-husband is not required to provide for her. Similarly, after childbirth, he is not required to offer her a maintenance allowance even during the two-year period in which the woman can keep her baby.

Effects of the Dissolution of Marriage on Property

❖ Dissolution through the Husband's Death

If the parents-in-law of the wife send her back to her family, the latter is not required to pay back the dowry provided by the late husband at the contracting of the marriage.

It may occur that parents give their daughter in marriage many times and get the dowry at each new marriage.

A widow can join her family against her in-laws wishes, even when she leaves her children in early age, In this case, too, there is no need for restoring the dowry. More often, an aged widow, whose children are already grown-up stays with them till her death.

❖ Dissolution through the Wife's Death

When her death is natural, there is no need for material compensation. However, when the husband kills his wife, one of the following cases may be faced:

1) If he has the right to kill her, such as when he catches her in the act of committing adultery, he pays blood money to her family and receives compensation from the seducer.

2) If he did not have the right to kill her, he has to pay blood-money to his parents-in-law. Yet if the killed wife has left male

children, there are the ones who get the blood -money. If she has only female children, the blood -money is paid to her parents.

Any other person who kills a married woman has to pay blood-money to the following beneficiaries:

- the parents of the victim when she is childless or has only female children; in this case, the parents give back the dowry to the husband;
- the male children when they exist, but they are not required to pay back the dowry to their father.

❖ Dissolution by Repudiation:

Some of the cases are as follows:

1. A husband repudiates his wife, even when he has no acceptable reason; the dowry he gave to his parents-in-law is restored to him.
2. Repudiation is pronounced by the husband after the mutual agreement of the two parties: the dowry is restored as in the preceding case.
3. A husband repudiates his wife after she has committed a serious error that has been proved: the dowry is restored as above.
4. A husband repudiates his wife, but the fault lies with him: the dowry is restored as above. However, the amount of the dowry to be paid back is usually reduced, depending on the degree of the husband's fault, such as in the case of an injury that has left a scar or resulted in the loss of an organ, the knocking down of the teeth, etc.

❖ How is the Dowry Restored?

When the husband decides to divorce his wife, he announces it before witnesses. It is from this moment onwards that the legal three-month waiting period is counted. At the end of this period, the wife's parents restore the dowry to the husband in the presence of witnesses. The divorced woman can, as a result, get remarried. Disputes that may arise are settled by the local Assembly which approved the conclusion of the marriage in the first place.

At the time of divorce, there should be a guarantor who formally accepts responsibility for the refunding of the dowry.

There is a correlation between the manner the dowry has been paid and the way it is refunded.

The amount of dowry paid in kind by the husband at the conclusion of the marriage is repaid in kind by the wife's family if he demands it, or if the other party insists on it. The change that may occur in the price of animals is not taken into consideration. More often than not, only the total amount is required.

As soon as the three-month waiting period has elapsed, the dowry should be paid back immediately. When the ex-wife's parents cannot pay, the guarantor should pay; otherwise, the husband takes him to court. Usually, at the dissolution of marriage, the wife's father who is unable to pay the dowry demands that the refunding is delayed till the day his daughter marries again.

❖ Who refunds the Dowry?

The dowry is always repaid, either by the person who received it, or by his heirs, or even by the divorced woman herself.

a. When a father gives his daughter in marriage and dies, leaving one or more sons, at the time of divorce, the dowry is repaid by his lone son or jointly by all his sons, respectively.

b. When a father gives his daughter in marriage and dies, leaving only daughters with other male heirs , If his property remains undivided, the dowry of his divorced daughter is taken from the collective inheritance. If the latter has been divided, each one of the heirs refunds in proportion to his share of the inheritance.

c. A divorced woman who owns property can pay back the dowry so as to be able to marry again.

d. If her parents-in-law allow her, a widow, who has small male children, can take some money from their possessions so as to “buy back” her liberty and remain with them. She may give back to her parents a certain amount of money that varies but is always less than the dowry they may get in case she marries again.

A divorced woman can get remarried before the full refunding of the dowry by her parents. However, they have to allocate the money they get from the second husband to the refunding of the first one.

A Specific Study of the Right to Escape

Among the Zayans, the right to escape from home is usually put into practice by a woman who uses this means to protest against the ill-treatment she receives from the person who has authority over her.

A young girl, a widow or a divorced woman, no matter what status she may have at the time she lives in the tent of the head of family, uses this right more often than not to protest against a marriage which is imposed on her.

When married, a woman can also have recourse to the means of running away from the ill-treatment she receives from her husband in order to make him take more care of her, or more often to obtain divorce.

Depending on the circumstances, the runaway woman takes refuge either in her parents' home or in a leading man's house or even in her lover's place. If she runs away on her own, without the complicity of the person she has sought refuge with, her husband or her parents go to fetch her. The individual with whom she has taken refuge does not need to notify her husband or her parents, who can take her back with no conditions whatsoever.

If the husband accuses of complicity the man whose house the former's wife has taken refuge in, the man can prove his innocence by

the testimony of his neighbours as well as by the speed with which he has notified the husband.

Two cases may arise here:

The woman may agree or refuse to go back to the house from which she has escaped, different cases arise here:

a) When the young girl returns to her father's house, the corruptor is not required to give compensation to the father. The same applies to the widow and the divorced person.

b) When the wife goes back to her marital home , the seducer has to pay a compensation to the husband. It is called "expenses", which amounts now to two hundred *Doros*.

It is worth noting here that among the Aït Bouhadou tribe, when the runaway young girl has been deflowered, the father can require compensation. But among the Aït Bou Mzil, this compensation is not required at all.

c) When the young girl, or the widow or the divorced woman refuses to go back to the family home and marries the man who has received her, the latter has to pay a certain amount of money to the parents. This amount is discussed and fixed by the local Assembly.

d) If the husband requires it, the runaway wife who refuses to return to her marital home should be taken back by force. He, thus, gets from the person who has given her refuge and who has been her accomplice an amount of money as compensation called "expenses".

Moreover, a forced divorce cannot take place even when the cuckolded husband has received the compensation.

The husband cannot take into court the parents of his runaway wife except when they are her accomplice. If the wife has run away with the complicity of a third person, the husband has the right to kill the latter, whether he belongs to the tribe or not. However, in case of murder, he pays blood money minus the “expenses”. He has also the right to kill his wife, but he has to pay blood money.

When the abductor, who belongs to the husband’s tribe, refuses to pay the compensation, the local Assembly can force him to do so by taking animals from his own herd. For, the payment of this type of compensation should be carried out immediately.

There are no special rules among allied tribes or tribes which have mutually provided guarantors with regard to the case of a runaway woman,

In general, neighbouring tribes send back a runaway woman taking refuge among them at the intervention of the respective local Assemblies. Fast agreements may be reached, but they are mostly tacit.

Filiation

❖ Children born out of wedlock:

A child conceived out of wedlock in spite of the fact that his mother is married is considered illegitimate. However, a child conceived out of wedlock and born to a married woman can be recognised by her husband as his legitimate child.

A husband who wants to acknowledge the paternity of a child conceived out of wedlock should make a formal declaration before the local Assembly, perform the customary slaughtering of an animal and name the new born baby. However, he is free to disown him. The lack of formalities in this respect can give the latter the status of a natural child.

The disowned child belongs to his mother. If the husband refuses to provide for this child and to keep him in his house, the mother should entrust her father or one of her relatives with the bringing up of her child.

A fatherless child bears a name associated with that of his mother, for instance: Mohmmad-n-Fadma (Mohmmed son of Fadma).

If a woman has already been married; her ex-husband can claim the child, even if his ex-wife has remained unmarried for a long time or if her misconduct has been established. This issue of paternity is settled according the rules which govern the case of a “sleeping foetus”.

A lover can never claim the paternity of a child.

❖ A child born to an unmarried woman

a) A girl-mother brings dishonour on her family and public disgrace on herself. When someone wants to poke fun at her, he says to her: "Look at the mother of bastards". Though he disapproves of her behaviour, the father of a girl-mother does not punish her. Her child is given a name followed by that of hers. Her father is not required to provide for the child.

Custom does not allow a girl-mother to announce that one of her lovers is the father of her baby. Moreover, a Zayan man never declares spontaneously that he is the father of a child born out of wedlock.

b) An ex-husband or his parents can claims a child born a long time after the dissolution of marriage and no matter how immoral the woman's conduct is on condition that she declared that she was pregnant at the moment of divorce.

An ex-husband is free to admit or deny the paternity of the child his ex-wife has declared to be of him. If he disowns the child and refuses to look after him in his house, the woman can entrust her baby to her father or to one of her nearest relatives.

A natural child cannot claim a share of the inheritance if the person who brought him up did not adopt him and declare, in his lifetime before the local Assembly, that he has chosen him as a heir.

Similarly, if the mother of the child does not get married, the latter won't have the right to inherit from his maternal grand-father's property.

❖ Children born during Marriage:

The husband can always deny the paternity of a child, even when the latter is born during marriage and at a moment which shows that he was surely conceived in the course of marriage.

He, thus, should make a declaration before the local Assembly giving a good reason such as his impotence, for instance.

Children born after the seventh month of marriage are attributed to the husband. Even when the wife's adultery is proved, the husband is free to admit or deny the paternity of children born later on.

Adoption

Adoption is commonly practiced among the Zayans. However, it involves mostly relatives and hamlet members. The adoptive parent should be adult and married. The adopted child should be in his earliest age and still unable to speak.

A child cannot be adopted without the consent of his parents.
If a child is without parents, he may be adopted without any formality whatsoever.

Adoption does not create any blood or paternity tie between the relatives or the allies of the adoptive parent and those of the adopted child; thus, the latter can marry the daughter or even the widow or the ex-wife of his adoptive father.

It is worth noting that adoption is of two types, it may be either pure and simple or under conditions. Pure and simple adoption does not confer the rights of a legitimate child on the adopted child, nor does it impose on him the former's duties. Moreover, he does not lose his inheritance rights in his original family and remains subject to paternal authority. In contrast to the first type, conditional adoption is governed by the clauses which the adoptive father chooses to establish. Paternal authority may, thus, be entirely in the hand of the adoptive father.

Adoption is officialised in a very simple way: it is proclaimed before the local Assembly. The adoptive father pronounces the following

statement: “Remember oh Assembly, so and so has entrusted me with the bringing up of his son. I do accept!” the representative of the adopted child answers: “I accept”.

When Adoption is made under certain conditions, the adoptive father announces before the Assembly the clauses he has fixed and the representative of the adopted child should accept them.

Whether the adopted child has the right to inherit from his adoptive father or not depends on the clauses fixed during the adoption agreement. Despite these initial clauses, the adoptive father can later allot a portion of his property to the adopted child on condition that this portion does not infringe considerably upon the interests of his natural heirs. The latter can give up the inheritance in favour of the adopted child, but if he does not fulfil his commitments, he will lose all his rights over the inherited property.

The adopted child is called “adopted child of so and so”. In case of his death, his legitimate or adoptive parents inherit his property, according to the clauses established at the making of the adoption agreement.

A Protected person

In the Zayan region, the name "*Amhars*" or "*Shenguiti*" is given to any person who has sought the protection of a family chief and, thus, concluded a mixed work and marriage contract with the former. As a result the "*Amhars*" commits himself to offering the whole product of his labour to the chief of the family who, in return, should find him a wife and provide for the new family.

The woman given in marriage to the "*Amhars*" may be a daughter, a sister or a relative of the family chief, who pays the dowry.

The man who desires to be an "*Amhars*" should be pubescent and no longer under his father's authority. Of course, he should also be able to perform his job very well. He has the right to marry only one woman; namely, he cannot have more than one wife at the same time. In case the wife of the "*Amshars"* dies, the chief of the family is free to find him another wife or fire him altogether.

The "*Amhars"* should help his master in all the tasks relative to the life of the household and in those where his help is wanted. He is considered as a family member, and as such, it is obligatory that his master provides him with a wife, a home, food and clothes.

To safeguard his future, the "*Amhars*" should ask, at the conclusion of the agreement, for the meeting of the local Assembly before which

he fixes with the master of the tent the terms of his entry into the service of the latter. If he brings with him possessions or money, he should declare them. He is free to put an end to his status at any time and for any reason whatsoever. Similarly, the master can fire him under the same conditions.

The cancellation of the contract should be carried out according to the terms dictated by the "*Amhars*" at the moment of its conclusion. The validity of a contract can be agreed upon for a specific number of years or for an unlimited period. If before the expiry of the contract, the "*Amhars*" leaves of his own free will or is fired by his master, the latter is required to give him as compensation the equivalent of the annual salary of a shepherd multiplied by the number of years the former has worked.

In both cases, the "*Amhars"* cannot claim a share of the community's property, nor demand that his wife and his children leave with him. It is the master who has full authority in this respect. However, the "*Amhars*" gets the possessions he brought with him at the moment of his recruitment.

An "*Amhars*" who has met his obligations during the contract period loses his status as a subject and acquires the free control of his share of property, marital authority over his wife as well as parental authority over his children. However, he cannot leave the tribe of his ex-protector unless a special clause allows him to do so.

At his departure, and if he has no property share, the "*Amhars*" can get back only his still remaining possessions. Among the Aït Bou Haddou, he gets back all the property items he brought with him the first day, or the equivalent of their value in money if they are no longer there.

An "*Amhars*" who marries a woman not belonging to his master's family in return for a dowry paid from the jointly-owned property is free to settle with his wife and children wherever he wants. However, his master can require the refunding of half the dowry at the moment of the property division.

An "*Amhars*" who has concluded an agreement which does not specify in the clauses of the contract the period of its validity should never leave his master's hamlet or tribe if he wants to keep his wife[30] and children. The master, however, is always free to keep him or fire him.

The property items acquired by the "*Amhars*" through purchase or donation during his servitude become immediately part of his master's property. Likewise, even the offspring of the "*Amhars*" become part of the master's family[31].

[30] The wife of an "*Amhars*" abandoned by her husband who has left the tribe is deemed divorced and should be submitted to the legal waiting period before she gets remarried.
[31] Imazighen consider this measure as an opportunity to compensate the master for the money he spent in order to provide for the "*Amhars'"* own family.

When the master dies, the children of the "*Amhars*" do not inherit from their maternal grand father unless they have always lived under his protection and provided that he has not left a father, a son, full or half brothers, or grand children.

When the deceased master has left only distant relatives, the son of the "*Amhars*" has the right to a third of the inheritance while the remaining two thirds go to the other heirs.

When a widow, whose only son is underage, legally marries an "*Amhars*", she can entrust the latter with the management of her son's property. When the son comes of age, he may allow the "*Amhars*" to get a share of the property the latter has managed and to move to a separate tent within the tribe.

Guardianship of underage children

At the death of the mother, guardianship is not needed. The father continues, as in the past, to manage the property of his underage children.

A widow can have the guardianship of her children, but she is submitted to the control of the deceased husband's relatives. Later, if the latter find that she is unworthy or incapable of carrying out the task, they have the right to take away this guardianship from her and entrust it to a more qualified relative.

This control is given in the first place to the paternal grandfather, followed by the first uncle, the first grand son and so on till the last heir on the father's side. Relatives on the mother's side cannot have this control.

When the mother is dead, or remarried or incapable, guardianship may be entrusted to the eldest sister, showing the capacity to carry it out. In case there is no sister, guardianship is entrusted to the nearest relative. Paternal aunt can assume this responsibility, too.

When there are relatives of the same degree, guardianship goes to the person deemed as the worthiest among them. Moreover, before he dies, the father has the right to choose one of his relatives as the guardian of his children. Finally, if there are no relatives on the father's side, and if the father has not appointed anyone, it is the local

Assembly which appoints the guardian. It also does the same when the guardian chosen by the deceased father is dismissed.

When the deceased father has left only girls, the guardianship of his daughters as well as of his property goes by right to his nearest relative. But guardianship cannot be imposed on anybody, including the father or the brother of the deceased person. Similarly, it can be taken away from anyone whom the local Assembly deems unworthy of it and is entrusted to a more qualified one.

Among the Zayans, there is no special name for the guardian. He is called the “father who brought him up” in opposition to the “father who begot him”. The surrogate guardian is called ‘Nadir’.

The guardian should look after the property of the children as a good father. He can give up his right to guardianship in favour of a third party. He can buy for himself the property of the children under his protection, but in the open and in the absence of a bidder. Similarly, he can lease the immovables on condition that he has been declared as the highest bidder in a public auction.

Only the grand father has the right, as a guardian, to do what he likes with the property of his protected grand children: he can sell, exchange, borrow, mortgage, or give the property in terms of an antichresis contract, without being asked to answer for his acts by

anybody. He can also arrange the marriage of his protected grandchildren as he pleases.

The guardian chosen from among relatives other than the grandfather has to consult the other relatives or ,failing that ,the hamlet inhabitants ,when he wants to arrange the marriage of the children under his guardianship or to carry out a transaction with regard to their immovables.

The guardian is the legal representative of the child under his protection on all occasions and has the right to punish him as well. But the guardian cannot use for his own benefit the possessions of the child unless he/she lives under the same roof with the latter as a mother, paternal grandfather, eldest sister or paternal aunt.

When the guardian is a stranger, which is very rare, all his acts are submitted to the control of the child's relatives.

Guardianship ends for boys when they reach majority and for girls when they get married. The guardian is not accountable to the children under his care when they become adult.

Mental Derangement

When an individual suffers from insanity, which may turn him into a public menace, he is entrusted to the care of his relatives in the order of inheritance. They should manage his possessions and provide for him. The permission of the local assembly is not necessary and is not required except in time of disagreement among the relatives. The latter cannot sell his immovables except in case of refunding his debts or providing for him. The selling should take place through public auction. The powers with which the guardian of a mentally ill person is entrusted are similar to those of the guardian of a child. The wife of a mentally ill person can ask for divorce after a period of three years. Before this deadline the rights of the mentally ill person with regards to his wife cannot be fulfilled by anybody else. If the illness comes to an end, the ban is lifted and the person regains the enjoyment of his possessions, without receiving any explanation from his relatives. The latter are responsible for the actions of the mentally ill person, even the blood money resulting from his killing of another person.

The fool and the idiot who have no personal resources are normally provided for by their family.

Absence

A person is considered absent when he has not appeared in his house for a period of time and has never been heard of since. When the missing person has left male children, the latter continue to run the property of their father if they are adult .But when they are still underage, a guardian is appointed. In case the missing husband has left only a wife, the latter has to stay in the marital home for at least two years. Meanwhile, she continues to run the property of her husband with the help of his potential heirs. After this waiting period, she can regain her freedom and the property of the husband is divided among his heirs.

If the husband reappears again, he gets back his possessions without any formality whatsoever. He is given explanations about the running of his property and has the right to cancel any selling of his immovables for any reason except for the refunding of the debts left by him or the need to provide for his own family.

If during the period of his absence, the question of dividing an inheritance among heirs including him arises, his share is added to his property.

A husband who comes back after a period of absence and finds that his wife has married another man cannot annul this new marriage. However, he can ask his parents-in-law to restore the dowry to him.

When there is a presumption of death such as in the case of a missing husband who was supposed to cross a river and has disappeared since, his wife can get remarried under the same conditions of a widow ,namely after the conventional waiting period of four months and ten days.

Inheritance

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In the Zayan land, women are excluded from enjoying their inheritance rights, except in some small arabized areas inhabited by sheriffs where the former are allowed to inherit property according to the proportions stipulated by the Islamic *Sharia* (religious law). The names of these groups are as follows: Ait Hammou Aissa, Ait Taskert, Ait Tamskourt, Ait El Hri, Ait Nouh, Ait Arouggou, Ait Sidi Bouaabed , Ait Hemmad and Ait Lahcen . To get one's share of an inheritance, one should exist at the moment of the division of the dead relative's property. For instance, a child still in the womb of his mother is considered existent and inherits. But only an apparent pregnancy can postpone the settling of an inheritance case till the birth of the child. It is worth noting that a father cannot disinherit his legitimate child, or his natural child whom he has already declared to have fathered.

I. Passing on inheritance to different heirs in the tribes where women are not included the process:

a) In direct line:

The father has priority over his son and grandson in terms of inheriting the property of his childless dead son, daughter, brother, etc. He is not required to share this inherited property with his own children or spouse or other relatives. This rule is categorical whether the deceased person lived under the same roof with the father or not.

The recognized natural child inherits in the same way the legitimate child does.

The grandson takes the place of the son in the inheritance process when the latter is dead.

b) Collateral line:

The brother of a deceased person comes first before the other relatives. But the brother does not inherit form his deceased brother when the latter‘s father, son or grandson are still alive. Similarly, a paternal uncle inherits only in case of the absence of the father, son or grandson of his deceased nephew. A uterine brother and maternal uncle have no right to inheritance. When many relatives of the same degree are involved in an inheritance process, each one of them gets an equal part.

c) Diverse cases of inheritance:

1. When a woman dies and has children, the latter alone inherit from her. When she is childless,, her male relatives inherit from her, according to the order of the degrees of relationship.
2. A person who happens to be an heir of the relative he has murdered is not excluded from getting his share of the inheritance.
3. The property left by a natural son who dies childless is inherited by his maternal grandfather, maternal uncles, or the offspring of the latter.
4. The property left by a found child of unknown parents goes at his death to people who brought him up.

d) Payment of a deceased person's debts:

The distribution of an inheritance cannot take place until the payment of the debts has been made. The heirs have to pay all the debts even when the latter are over the value of the inheritance. The money owed to the Makhzen (i.e. the authorities) by the deceased person is paid by the heirs only when the amount does not exceed the whole value of the inheritance. The legatee (a person who gets a donation according to the terms of a will) never contributes to the payment of the debts due by the deceased donor. The creditors cannot demand that they get paid back by means of objects or money coming directly from the deceased person's property.

e) A stranger's Legacy:

We have seen earlier that to get the right to settle in a territory, a stranger has to sacrifice a sheep and ask for the protection of one of the tribesmen.

1. If at his death, the stranger does not leave a wife, children, or other heirs, it is his protector who inherits all the property. If later on known relatives of the deceased stranger come forward, the protector gives them back the entire legacy he has received.

2. If the stranger dies leaving a childless widow, the latter, when not belonging to the tribe, gets a share fixed by the local assembly. The remaining part goes to the protector till a relative of the stranger comes forward. In case the stranger leaves male children, the latter get the entire

inheritance. If he leaves only daughters, the protector gets the entire legacy including the daughters.

In general, a Berber always leaves at his death a relative as heir. If he does not have an heir in the village, his legacy is divided among the members of his local area. But when he has heirs living outside the tribe, they are informed of his death and thus come to take possession of the legacy after proving their family ties with the deceased person. The right by proof is not accepted except at the time of proceeding to the division of the legacy or a short time after. The stranger's heir has to respect the obligation of settling in the tribe so as to get the property of his deceased relative.

It is worth mentioning here other important points that regulate the division of a legacy:

- The funeral expenses are deduced from the whole amount of the inheritance. The possessions willed by the deceased person should not engulf the entire inheritance.

- The heir or heirs are required to accept the inheritance as it is even when the liabilities on an estate exceed the credits.

- The contracts signed by the deceased person should be respected by his heirs.

- The case of an heir selling his share to a stranger at the time of partitioning the inheritance has never taken place.

- When the deceased person has, while alive, donated some possessions to one of the heirs, this donation is not taken into account during the partitioning of the legacy.

- When one of the heirs owes money to the deceased person, it is taken into account during the partitioning of the legacy.

- When one or more heirs have received some property as a gift from the deceased person, during his life, so as to settle in a separate tent of their own, they cannot claim at his death anything more than their share of the inherited property.

Partitioning of an inheritance

Joint heirs are not required to keep the joint owned property undivided. However, real estate inherited by underage persons is not partitioned till one of them at least reaches adulthood.

When all the available properties of the deceased person are listed, the heirs proceed to the partitioning of the legacy under the supervision of the local assembly. All that can be measured in terms of quantity is shared out by the joint heirs. Parts are formed and are shared out by drawing lots. The same is done with cattle; however, those animals which cannot be included in the batch are sold and the price is shared out.

Prices are put on clothes, arms and horses by the heirs themselves in the presence of witnesses. Each heir takes the items for which he is the highest bidder.

The partition of land property is carried out as follows:

a. If the fields are irrigated, each parcel, irrespective of its value, is divided among all the heirs. The boundaries of different parts are defined by means of stone piles and new irrigation channels are also made so that the new parcels might be irrigated.

b. Yet, if the fields are not irrigable, the land is shared out among the heirs, in the presence of the local assembly. When there is no agreement on the choice of plots, there is a resort to drawing lots.

Wells and houses are divided when their number allows for each heir to get one item for a share. When the division is impossible, there is recourse to one of the following alternatives:

- To proceed with the sale of the item.
- To keep it undivided.
- To include it in the share of one of the heirs, and even take it into account later.

Gardens are not divided except when they are of a larger size that allows for division.

Inter vivos Donation and Will

1. Inter vivos Donation

Inter vivo donations are allowed in the Zayan region. They may involve only movable property, with the exclusion of immovable property.

The donor can grant a donation to a third party as long as it does not substantially damage the interests of the heirs; otherwise, the latter can refuse it. Donations become irrevocable only when they have been made under the above conditions.

These rules apply also to any donation made for an adopted child or a recognized natural child.

To make a donation, a person should be in his right mind and not in mortal danger. The minor, the banned person and the woman cannot carry out a donation inter vivos. For the woman's possessions are under the control of anyone who has parental authority over her. Similarly, a person who owes blood money, a fine or any other debt cannot be a donor. Therefore, any donation that he may make will be cancelled and the donated thing will be taken back.

All persons can be donors and there is no discrimination in this respect with regard to race or origin.

A donation that is not restricted by a condition is made in the presence of witnesses.

A donation has an absolute and definitive character: the donor can never cancel it.

2. The Will.

Local custom allows the use of the will, but it is not practiced. The testator cannot donate his property without the consent of his potential heirs. The rules relative to the position of the testator are similar to the ones mentioned above for the donor.

Testimony and Evidence

Since Imazighen are illiterate, legal documents and contracts are never put down in writing. However, to prevent bad faith consequences, custom requires that in order to be valid, every deed, agreement or contract should necessarily be concluded before witnesses.

In case of dispute, the party that claims to be prejudiced should provide evidence of the truth of its claims through testimony. When testimony is deemed insufficient, it should be completed by oath. Testimony is only a moral obligation and witnesses should not be forced to testify under any kind of threat.

Providing evidence for the taking place of an ordinary act requires the presence of at least three witnesses .However, when it comes to certifying the payment of a dowry or blood money, the number of witnesses should not be less than five people for the dowry and twelve for blood money.

Testimony of one or two persons may be accepted as enough on condition that these witnesses are considered as notable people whose probity, righteousness, and piety are known to everybody.

A person should have been an eyewitness of the act or action that he testifies to. In other words, he should have seen the two parties and heard from their mouths the provisions of the deals made between

them. A person's testimony based on other people's account is not valid. Similarly, a person's testimony in favor of his relatives is not accepted. Likewise, an *Amhars* (a protected individual) cannot provide testimony in favor of a member of the family which has taken him under its protection. Usually, strangers are not accepted as witnesses, and the testimony of non-Muslims is not valid. However, some strangers who have settled in the tribe for a period of time and have a good reputation are allowed to give their testimony. A woman, a non-emancipated black man, an underage male child or a mentally ill person are not allowed to provide testimony, too.

No physical handicap, except blindness, disqualifies a person from giving testimony, as long as the handicap does not prevent the witness from delivering his message though gestures or sounds.

When, as a result of a bad illness or a disability, a witness cannot go to the local assembly meeting place, a member of the assembly or a distinguished person is sent to the house of the disabled person to get his testimony. The transmission of this testimony can in no way be rejected by the other side. If the delegate thinks that the witness does not enjoy all his mental faculties, he refrains from asking him and waits till the latter's condition improves.

A person who shrinks from giving testimony attracts divine curse and compromises his reputation in the same way as a witness who provides a false testimony.

The onus is on the plaintiff to present witnesses to assert his claims. It is only when he declares to be incapable of doing it that the defendant is asked in his turn to present his witnesses ,or failing ,to exculpate himself by the presentation of the customary oath.

The opposing party may disqualify certain witnesses presented by the plaintiff on condition that it provides the reason of the irregularity of their testimony: either because they are relatives of the latter or personal enemies of the former or because they were not eyewitnesses of the events they want to provide testimony to.

In real estate matters, testimonials asserting ownership prevail over those which establish only the possession and usage of the land.

A witness is not required to back his declaration by oath except the one who has been disqualified and who must provide in support of his declaration ten oaths among which five are taken by persons designated by the opposing party.

Oaths

Oath, which is common to the majority of primitive legislations, has a paramount role in the settlement of trials. Custom has recourse to oath only when evidence is lacking; it is the last resort that common law has at its disposal to settle disputes. In principle, oath must be taken by the person who denies the existence of the thing affirmed without any proof by his opponent. However, the assembly reserves the right to decide which of the two parties must swear. In some cases also, the oath is required of both parties.

The party which is asked to take the oath is not allowed to solemnly swear alone, regardless of the importance of the case in question. However some exceptions are accepted. For instance, when it is a stranger with no relative or protector, it is the assembly which decides the number of coswearers, imposes the formula of the oath and designates, on the proposal of the opponent, the place and the day on which the oath is to be taken.

The party which receives the oaths may designate by name half of the coswearers. The opponent party which should provide the oath must not swear except if he has been designated. The defendant can ask for the replacement of the coswearers he thinks unable or unwilling to take the oath for him, for a justified reason. The refusal of

a coswearer to take the oath invalidates the oath of the other coswearers.

Here is the scale of the implementation of the oaths:

- From 1to100 Francs: 5 coswearers including three designated by the other party.
- Above 100 Francs: 10 coswearers including five designated by the other party.
- A sheep or goat: 5 coswearers including two or three designated by the other party.
- A donkey, a horse, a mule, a camel or a cow: 10 coswearers including five designated by the other party.
- Killing of a woman: 20 coswearers including ten designated by the other party.
- Killing of a man: 40 coswearers including twenty designated by the other party.

When the dispute is about two things, whose species and value are similar, whether they have been lent or stolen together, only one oath session is required and the number of coswearers is calculated, depending on the value of one of them. However, if the dispute is about two different things, it is the number of coswearers meant for the most important one which is required. Similarly, if the loaning or stealing or two things of the same nature or value has taken place at different periods, each one necessitates a session of oath taking.

In real estate matters, the number of coswearers varies from 10to 40, depending on whether it involves two individuals or two groups of a district, a fraction, or a different tribe. In the first case, the number of coswearers is 10, in the second varies from 20to 40 respectively.

If the two parties belong to the same district, the one who should receive coswearers can chose the latter only from among the clan of his mosque.

The circumstances and the place, in which thefts have happened, impact on the number of coswearers. Therefore, any theft of objects or grains of value no matter how small it may be, committed by violation inside a tent, a house, a loft or a silo entails the oath of ten coswearers instead of five expected for a minor theft. It is not the same for the stealing of animals, committed inside or outside, the number of coswearers usually remains the same.

Coswearers cannot be designated except at the rate of one per household; namely that one tent cannot provide two or more chosen coswearers.

Members of the same family, community or tribe lend reciprocally the oath .the one who refuses to swear solemnly in favor of his brother may be exposed to revenge. The fact of refusing to swear solemnly in favor of a relative or fellow tribesman corresponds to a denial.

There are some individuals who refuse the oath for a clan or a whole fraction. In order that this refusal becomes operational, it must

be publically announced to the local assembly, via the public announcer.

A woman is not allowed to swear solemnly except for denying something that she has been personally blamed for or determining the doubtful paternity of a child in state of gestation, or considered to be "sleeping".

A child who is still underage or for whom fasting is not yet a religious duty cannot be chosen as a coswearer. Similarly, the oath of a mentally ill person is not valid. No physical handicap hinders an individual from taking an oath.

The two parties and the coswearers must respect the day and the place which have been fixed for the ceremony of the oath taking. This place consists in a sanctuary or a holy man's shrine that are in the tribe's territory or in the neighborhood of the place where the two parties live, particularly when they are in transhumance.

The oath is first taken at the entrance of the sanctuary by the party which has been designated by the assembly. He always starts by the following formula: "I solemnly swear by the sainthood of this holy man". His coswearers in their turn swear by saying: "I take the path my brother has taken".

The party which arrives at the fixed place should wait for the opposing party till mid- afternoon prayer time. After this deadline, the absent party is declared defaulting, unless there is a justified hindrance.

The unjustified failure to show up is considered as a confession of the crime.

A person designated as a coswearer cannot be replaced at the oath taking ceremony. Furthermore, if as a result of illness, bad weather or a justified cause, it has been impossible for all the coswearers to attend the oath ceremony, the latter is postponed till all the concerned people are together. This condition is essential for the validity of the oath. Sometimes, a party may refuse the reception of the oath that has been referred to its opponent. If the former persists in its refusal, its demand is purely and simply rejected.

Land Tenure

General Considerations

Immovable Property

The property system in the Zayan area is the result of the political evolution of the area at the time of the *siba (anarchy).*

While wars were ruining either alternately or simultaneously the Zayan area, each tribe was forced to cede in turn the land which had been conquered the day before and which may possibly be recovered the following day. Since the occupation of land was the result of the collective effort of all the members of the tribe, it could never be preserved unless this effort remained collective. As a result, the land acquired in common remained common, and each individual changed every year the site of his cultivation, as he wished, and according to his influence in the tribe, without partitioning the land among the members of the tribe at fixed times.

However, when Caid Moha ou Hammou became a leader with full authority to make all Zayan tribes respect his decisions, the latter grew tired of resorting to wars so as to protect their lands against their reciprocal attacks. Therefore, they asked him to determine for each tribe the borders of its lands meant for agricultural and pastoral activities.

After this first partitioning had been done, the local assemblies carried out a sub-division by sharing out the zone allotted to them

between all the families according to each of the latter's influence. It was in this way that individual property was established. However, since herds needed large spaces, certain regions kept their collective aspect, by a decision of the Caid, for the benefit of all tribes.

As for the forest, it is itself strewn with a large number of mostly fertile clearings, which are subject to the private property system and where whole fractions live.

In brief, without having the rigor of a European real estate organization, the property system had already reached, undoubtedly before our arrival (i.e. of the French colonizers), the stage of private property with all its necessary operations: boundary marking, partitioning, transactions, inheritance, etc.

❖ **The different types of real estate ownerships:**

The ownerships are as follows:

1- A private property belonging to a single individual;

2- An undivided property belonging to several individuals;

3- A collective property belonging to all the members of a certain fraction;

4- A public property belonging to all the users in the tribe.

Furthermore, the sites of graveyards and silos are considered as collective properties. Rivers are public properties, whereas, forests sometimes belong to individuals and sometimes to a whole fraction or a tribe. Ravines belong to riverside residents.

❖ **The modes of appropriation:**

Land property was originally obtained in two ways: either by the clearance of the soil or by inheritance or donation.

The transfer of land property by way of purchase had not started to develop until the period of famine after which the poor, despite their love for land, were forced to sell part or the whole of their inheritance.

❖ **Acquisition:**

Only men can acquire the ownership of real property.

A woman is not granted the right to sell a real estate except if she is given authority to act on behalf of her orphan child or children under the age of 18.

In order that the transfer of property is valid, the seller should be recognized by the local assembly as the genuine owner and enjoying his full mental faculties and having reached the age at which he is under the religious obligation of fasting. The transaction of property transfer should also be necessarily concluded in the presence of the local assembly, and mainly in the presence of the seller's relatives who have the preemption right over the real estate.

A man who is seriously ill cannot sell a real estate. Foreigners are not allowed to buy a real state unless they are given permission by the local assembly.

After being paid, the seller should immediately enable the buyer to take possession of the sold real estate, except in the case in which a

third party who is recognized as having the right of preemption over this real estate wants to carry out its repurchase.

Taking possession of the sold real estate cannot take place until the seller harvests the entire crop or collects all the mature fruits existing in it, except when the whole lot has been sold.

If a deposit is paid and the buyer fails to pay the remaining part within the deadline agreed upon, this can provoke, at the seller's request, the cancellation of the sale. The seller can, therefore, keep the deposit and the buyer does not have the right to appeal. In case the seller fails to respect the terms of agreement, he must give back the double of the received deposit to the buyer. The price of the sale may be paid immediately or later.

Before proceeding to the sale, the buyer and the witnesses have to visit the real estate, the object of the transaction, and check the limits.

The seller is required to guarantee the ownership transfer of the real estate he has sold for at least three years. However, sometimes the buyer accepts to receive definitely the sold property at his own risk. In case of being evicted, the seller is, thus, not required to pay back the price of the real estate.

In the other cases, the evicted buyer has the right to require from the seller full compensation that consists in providing the former with an equivalent land or if not, paying back the price without interests.

At the time of eviction, the bona fide buyer is not responsible for any damage that may have taken place in the real estate he has bought. He

is also not required to return the fruits harvested since he took possession of the real estate. The responsibility falls only on the seller, who is also required to compensate the evicted buyer for the built constructions or other improvements the latter may have brought about in the real estate which he has bought in good faith. When the sold real estate is burdened with constraints that have not been declared during the sale, the transaction becomes void unless an amicable settlement has been agreed upon by the two parties.

Within a three year period following the day of the conclusion of the transaction, the seller remains always liable for any contesting raised against the buyer by a third party.

The buyer has to pay the price agreed upon before he takes possession of the acquired real estate.

If there is a contesting regarding the acquired real estate before the partial or complete payment of the price agreed upon, the buyer can either demand that the payment be suspended until the dispute is over or that the deposit be returned to him.

Any real estate transaction is likely to be cancelled either because of a nonpayment of the amount agreed upon within the fixed deadlines or of a dispute over the right of property or any other claim by a third party. As a result, the contractors respectively recover their property.

In this case, all the damages undergone by the real estate and duly identified should be estimated by experts and the costs have to be borne by the temporary occupier. But reparations or improvements

brought about in the same real estate cannot be the subject of any demand for compensation.

❖ **There are two modes of sale:**

In the first mode, the sale is perfect and definitive. It does not include any obligation or restriction. It is a simple sale with no conditions.

In the second mode, the sale is conditional, the seller has the right, in case the buyer does not respect the commitment he has undertaken, to recover the alienated real estate by way of repurchase, either at a price which will be offered to him by a third party, or at the price fixed during the initial sale .

Vivification

Vivification, which consists in clearing and preparing a field for cultivation, may be carried out only by landowners bordering a fallow land. If this land is situated between two or more plots belonging to several owners, the latter should divide it between two of them, in proportion to the latter's respective adjoining lands.

Owners of the lands that are situated under or on the slope of a fallow hillock and at right angles to this hillock have the right to stretch their limits to the crest. If these lands are on parallel strips, only the owner of the one situated at the highest level can stretch his land to the crest.

Unless granted permission from the whole tribe, nobody can plow a land situated in the middle of paths which form a whole where there is no plowing. The reasons given for this are the following: 1) not to reduce pastures; 2) to avoid damages which flocks may cause.

Mortgage

1. Land mortgage.

An individual lends a sum of money, for a limited period, to another party who, as a guarantee, grants the former the possession and use of a real estate belonging to him. If the debtor is unable to pay back the loan before the deadline agreed upon, he has to sell his plot of land to his creditor (according to the right of preemption) for a price determined by the assembly.

The creditor can extend the deadline at the debtor's request. But, if he requires that the land be sold, the debtor's relatives have the preemptive right to buy it. It is only when the relatives do not offer to buy it that the creditor can complete the price determined by the assembly and, thus, become the owner of the land. In case neither the creditor nor the debtor's relatives want to buy the land, it is the neighboring land owner who has the preference (application of the preemption principle). If all the neighboring land owners do not want to buy it, it is then sold to anyone who wants to buy it.

If no deadline has been fixed, as soon as the debtor proposes the repayment of the loan or the sale of the land, the creditor has to comply with his request. If it is the creditor who claims back his money, a short deadline is often agreed upon.

The creditor has the right, in any circumstances, to collect the fruits of his work «as is the case with the husband who should keep the children of the woman he has divorced», and this is so even when the fixed deadline expires before the harvest.

If the debtor cannot pay back the loan when the deadline expires and the creditor does not demand the repayment, the debtor can pay off his debt whenever it suits him, as long as he complies with the previous rule.

The maximum deadline for land mortgage is usually three years. If the debtor is dead, the obligation passes down to the heirs. The creditor cannot demand the repayment before the deadline's end.

If the debtor can refund only one part of the loan and asks the creditor to give him back the equivalent part of the mortgage, the creditor may refuse. In case there is a dispute over the return of the money, the creditor remains in possession of the real estate until the case is settled. If the return of the loan cannot be proven, the creditor should prove it by ten people's oaths five of whom are chosen by the debtor.

Throughout the period of the deadline, the mortgaged real estate remains the debtor's property, but the latter cannot sell it to a third party unless the buyer accepts to wait till the deadline's end. This sale, however, cannot be concluded without respecting the following conditions: namely that the creditor is refunded and the preemption rule is implemented.

If the creditor causes damage to the real estate or neglects it, the assembly will estimate the damage and the creditor has to make the necessary reparations or pay the value of damage. The debtor will not be responsible for the damages which are at the expense of the creditor in case a house collapses. In fact, when the creditor takes possession of the house, he is supposed to have examined it and accepted it. If the house collapses and the creditor cannot rent it out, the contract remains valid because the creditor can still recover his money when the deadline agreed upon expires.

2. Mortgage applies to objects and animals: such as jewelries, clothes, leathers, guns, tent furniture, carpets, livestock, etc.

The object has to be handed over in the presence of witnesses as is the case with the lent money. If this rule is not observed and the creditor denies that he has received the mortgaged object, he is required to take a solemn oath and the number of people who take an oath with him may vary, according to the value of the object. If the creditor loses or steals the mortgaged property, he has to refund it.

Preemptive Right

The preemptive right (*shefaa in Arabic*), which Imazighen have copied from the Islamic law, is widely used in the Zayan area. Apart from the seller's relatives who, depending on each one's rank in the order of inheritance, have priority to exercise their preemptive right, any individual from the immediate neighborhood, the fraction or the tribe has the right to exercise it against any foreigner who has bought a real estate within the tribe's territory.

It sometimes happens that when a person alone from the tribe cannot afford to recover the real estate, all the people from the immediate neighborhood and even from the tribe may collect the necessary amount of money with which the sold land is to be retrieved.

This extension of the preemptive right is guided only by a xenophobic feeling which is very marked in this area. Zayan people are all the time fearful of the foreign infiltration which may dispossess them of a large part of their lands through purchase. By establishing this preemptive right of a special character, they managed to get rid of this danger.

The priority order to exercise this right is as the same as for inheritance, in such a way that the son takes precedence over the brother. The latter comes before the uncle, etc. The full brother precedes the half one.

When two relatives of the same degree want to use their preemptive right, they must exercise it jointly. Consequently, the real estate becomes jointly-owned by them. Otherwise, they can divide it.

Neighborhood does not have priority over blood relationship with respect to the use of one's preemptive right.

Withdrawal from a jointly-owned property is possible, but in this case it is the co-owners who have priority with regard to the use of preemptive right.

When the sold real property is located near several other real properties belonging to various owners who have the same degree of blood relationship with the seller or who are strangers to him, the repurchase can be carried out by all of them, without taking into account the importance of the neighboring real property of each one of them.

Anyone who wants to sell his real property is required to inform those who have the preemptive right about his intention. The latter have a deadline of eight days (from one weekly market day to the following one) to decide whether or not to exercise their preemptive right on condition that they have all been informed.

A person who has a preemptive right over a sold real property, but was away from the tribe at the time of the transaction, can exercise his right on his return even after several years, on condition that he has never been informed about the sale. In this case, the buyer can collect the existing crop.

An individual who is present in the tribe and leaves the buyer in possession of the real estate for more than three years (or four years according to other informants) has no longer exercise his preemptive right even if he has not been informed about the sale.

A person cannot abstain, on his behalf an absent person, from exercising the latter's preemptive right unless he has been mandated to do so.

In case of an illegal sale, the deadline is not limited. However, those who want to exercise their preemptive right have to refund the buyer, taking into account to pay him all the expenses that he might have incurred after the evaluation by the assembly of the improvements he has made such as growing plants, building a house, etc. People who have the preemptive right cannot take action against the seller. However, if they doubt his good faith, they can demand that he takes a solemn oath.

When a person who has the preemptive right thinks that the parties involved in the sale have declared a price higher than the one actually paid in order to prevent recourse to the use of preemptive right , the buyer or the seller (depending on the tribes) have to confirm this price by means of taking ten oaths.

If after a two weeks or one month deadline it is proven that the real price was increased, another deadline comes into force starting from the day the fraud was discovered.

When an individual, who wants to exercise his preemptive right is evicted by a person who has priority over him with regard to using this right, accuses the latter of acting for the benefit of a third party, he can expressly forbid him from selling, renting out or mortgaging the property, the subject of the transaction, to that third party. He can even forbid him from allowing that third party to use the property or from using it jointly with the latter. Any breach of these clauses results in the cancelling of the transaction between the person who has used his preemptive right and the third party when there is evidence of bad faith. Consequently, his accuser is given the right to buy the property.

A person with a preemptive right has, if necessary, to refund in addition to the sale price the expenses resulting from any improvements made on the real property they have to be evaluated by one or several experts, depending on the case.

Custom does not allow the exercise of the preemptive right except for the sale of real property. Therefore, it is refused with regard to exchange, even when the lands concerned are of very unequal in value and the transaction involves a balancing adjustment.

A woman is allowed to exercise the preemptive right only if she acts on behalf of her son or sons who are under the age of eighteen.

When a minor child has the right to use his preemptive right and gives it up, the buyer asks the former's guardian to vouch for the fact that this minor child will not change his mind when he comes of age. If the guardian does so and the minor child subsequently decides to exercise

his preemptive right, the buyer cannot be sued, but the guardian may be ordered to give to the plaintiff a land of equal value as compensation.

Possession

Zayan custom expects that a peaceable, continuous possession for three consecutive years of a real estate, without any contesting or objection emanating from third parties present in the area, constitutes, in favor of the possessor, a legal presumption of property if he desires to transfer his rights to a legitimate cause such as sale, donation, inheritance, etc. In such a case, it is the plaintiff who is required to provide the proof of his right of property.

The prescription cannot be invoked by the occupier if the presumed owner is absent, forbidden or under the age of eighteen or also if it has been proven that the latter has kept quiet as a result of violence or fraud.

The possession becomes invalid starting from the day the new owner acknowledges that the right of property belongs to the plaintiff.

Even a bona fide purchase cannot change the nature of the seller's possession. The resale right can be exercised in all cases and the evicted owner has always his recourse against the seller.

The creditors have the right to lay claim to the acquired possession of their forbidden or bankrupt debtor even if the latter denies his rights so as not to make debts payments.

The peaceable possession of property accompanied with acts of planting or constructing gives the possessor the status of owner and

saves him from any risk of eviction unless it is proven that the plaintiff has been absent or forbidden or that the possessor has used violence or fraud.

The possessor who loses the case shall be compensated by the plaintiff for all the improvements the former has brought about in the real estate during his possession. Yet, the possessor is not required to compensate for major or deliberate damages caused to the real estate or to return the fruits and rents he has taken.

Joint Ownership

In Amazigh society where the family plays a predominant role and where the preservation of family heritage is at the forefront, the jointly-held properties are very numerous.

There are joint-owners who always preserve their property undivided. However, none of them is forced to remain in this status. Even properties owned by minors through inheritance are no exception; they may be divided before the legal claimants reach majority and administered by the guardian. To be specific, in order to preserve the interests of the minor, the division has to be carried out in the presence of the assembly. When the minor comes of age, he cannot ask for a new division of property. In order that a joint- ownership ceases, there is a need for only one co-owner to ask for the division.

A partition which is carried out in the absence of one of the concerned people, but in the presence of the assembly, is irrefutable. On his return a person who has been away cannot nullify the partition so as to provoke another one.

The sharing out of the real properties is carried by the co-owners themselves in the presence of the assembly. Recourse to drawing lots takes place only when there is disagreement about the plots. Regardless of the number of the real properties to be shared out, each parcel of land, no matter how small it may be, is divided among the

co-owners. Each co-owner has the right to sell his share even before the partition takes place. The new buyer, though he is not one of the co-owners, can keep, with the assent of the other inheritors, the acquired share jointly-held.

The only status of the co-owner (joint-heir or partner) does not allow the exercise of the preemptive right on the jointly-held share sold by one of the co-owners. This right is reserved for the seller's relatives, according to their rank in the inheritance order.

Disputes Related To Real Estate

Disputes over real properties are settled by means of testimonies or oath.

It is the current occupier who should prove that he has possessed the disputed real estate for a certain number of years (at least three), without interruption or objection to his ownership.

If he cannot prove his bona fide by producing a document or a testimony, it is, therefore, up to the opponent to prove the opposite. If the latter declares that he is unable to do so, it is the possessor who has to take the solemn oath.

The minimum number of people called to testify with regard to real estate issues is fixed at twelve. If this number is not reached, the concerned person shall complete his evidence by means of oath which has to be taken by the number of people equivalent to that of the missing witnesses until number twelve is reached. The oath takers compensating for the lacking witnesses include those expressly chosen by the opposing party.

If two individuals have a dispute over a piece of land forming a border line between their respective lands, it is up to the possessor through inheritance, or to the person who has witnessed the partition of the land, or to the oldest person to point out the real limit. This must be supported by either the testifying of no less than three witnesses

(unless the parties accept the arbitration of one or two third parties) or by the testimony of ten oath- taking people among whom five are to be appointed by the opposing party.

If the two opponents took part in the partitioning of the land, in the absence of witnesses, they both have to take an oath alone (without the need for other people's oath) and divide the contentious piece of land into two equal parts.

If the two parties have a dispute over the boundaries of a sold land, it is up to the seller to point out the real ones, supporting his allegations with a solemn oath taken by ten people among whom five should be chosen by the buyer.

Finally, it is important to recall that, in terms of real estate, testimonies which assert ownership take precedence over those which establish only possession.

Irrigation

There are two types of springs:

1) Those belonging to individuals; they are found in private real properties.

2) Those belonging to the local authorities; they are mostly big springs with a continuous water flow which feed watercourses.

A spring situated on a private land is the absolute property of the landowner who has the right to use it as he likes. His neighbors use the overflow without having to pay any fees.

As to collective water, it is distributed among the people concerned, according to the needs of each one of them.

When a landowner sells his irrigable property to a third party, the latter has the right to use the former's share of water. This same right may be given, if need be, to a foreign buyer who acquires a real estate without opposition.

A landowner whose field is not crossed by a normal watercourse can carry out, within his property, all the necessary work in search of underground water, without holding responsibility for any prejudice that these works may involuntarily cause to a third party. He can also try to create an irrigation system so as to bring water from the stream to his property. But if these works involve other people's lands, a prior

agreement of the landowners is necessary. If he disregards this, he may be sued by these landowners for the composition of damages.

When there is a need for a new collective irrigation channel, each family provides a worker. It is the assembly which decides about the project and which appoints someone to supervise the work. Anyone who is absent from work when his turn comes is condemned to slaughter a sheep which the other workers eat on the spot.

In collective irrigation, there is a main channel or *targa taksouat* from which secondary channels or *tirouggouin timezzianin* are derived.

The maintenance of the main channel is carried out by all the owners of irrigated land except the tribe's chief. The latter equally distributes work among the members of the tribe, the hamlet or the fraction and decides the reparations or the improvements to be made with regard to this channel. This work is generally carried out in spring, on returning to the plain.

A single landowner can carry out maintenance work of a public water channel, but on condition of previously getting the permission of the local authorities. Otherwise, he will be held financially responsible for any caused damage.

The grass growing on the irrigation channels belongs to the whole community.

The distribution of water is carried out on a day or part of a day basis, depending on the land's area.

No matter how the water channel's flow rate is, an abandoned land that has been newly cleared so as to be developed has the right to get its share of irrigation.

An owner may be deprived of water only when a spring's weak flow rate prevents water from reaching his field. He should in no way blame it on the owners whose land property is situated more upstream than his and who, as a result, are more privileged than him.

The owners of dominating lands can divert the whole water from a stream to the detriment of people whose property is situated downstream. This is why the Ait Hammou ou Said, who are situated upstream of the *assif Bousqour* river, take the whole water of the river from the Ait Chart, who are situated downstream and who say nothing. This rule applies to all types of water channels.

As a rule nobody presides over the water distribution operation, it is the landowners who agree among themselves on each one's turn of irrigation.

The distribution is usually carried out in the following way: the fields to be irrigated are divided into groups. Each group is to be irrigated in twenty four hours. Then there is a drawing of lots so as to determine when the turn of each group is due. During each group's turn, all its members irrigate their fields simultaneously. Each member takes some water, using a deviation channel whose flow rate is adjusted by means of eye measurement. The method used by landowners to make sure that two deviation channels have the same amount of water

consists in throwing some grass in the main channel just before the junction; if the grass stops at the junction, this means that the two deviation channels have equal flow rates.

All disputes related to irrigation are settled by the tribe's chief, assisted by the local assembly.

Any individual who has been prejudiced by a third party's breaking of the rules of irrigation can complain to the local assembly which ,along with the tribe's chief, go to the place where the offence has been committed in order to find out the facts for themselves.

The most common offences are:

1) Diversion of water.
2) Use of water for a period longer than the stipulated one.

The person found guilty of one of the above offences is condemned to slaughter a sheep and prepare a meal for the local assembly members in his house.

Wells are the exclusive property of the owner of the land in which there are found. He has the absolute right to prevent anybody else from using them. But, everybody can use the water of a puddle or of a pond situated within a private property even at the risk of draining them. However, the owners who water their cattle there should make sure that no damage is done to the crops which may be growing on either side of the access path.

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Like its contemporary colonial writings, this book, whose first and second editions were published in 1937 and 1946 respectively, was meant by Robert ASPINION (a French army officer working in the Native Affairs Service) to achieve a better knowledge of the Amazigh customs and way of life in an attempt to facilitate the "pacification" and control of the Amazigh tribes, a purpose central to the French colonial enterprise in Morocco.

The importance of this book lies in the precious information it gives us about major components of the Amazigh customary law; namely, public law, private law, criminal law and land tenure. Although the study focuses on the Zayan tribes of the Middle Atlas mountains in the first half of the twentieth century, most of the customs described in the book were common to a larger part of the Amazigh tribes in Morocco. Therefore, it contributes to the recording and preservation of major components of the Amazigh cultural heritage.

This is the reason why we deemed it important to translate the book into English in the hope of reaching a wider audience and thus contributing to the promotion of the Amazigh culture.

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